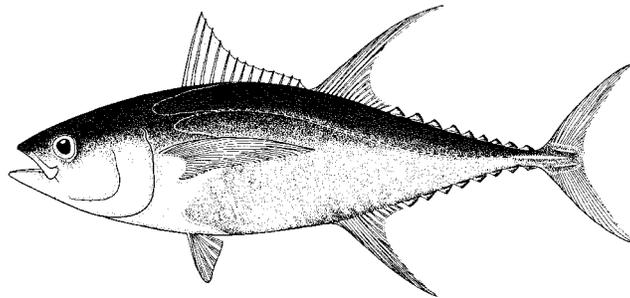


ENVIRONMENTAL ASSESSMENT
AND
REGULATORY IMPACT REVIEW
FOR A FINAL RULE TO
AMEND THE HIGHLY MIGRATORY SPECIES FISHERY REGULATIONS
ASSOCIATED WITH
CHARTER/HEADBOAT OPERATIONS, AND REQUIRE PERMITS FOR VESSELS
FISHING RECREATIONALLY FOR HIGHLY MIGRATORY SPECIES



United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Office of Sustainable Fisheries
Highly Migratory Species Management Division

November 2002

Amend the Highly Migratory Species (HMS) Fishery Regulations Associated with Charter/Headboat (CHB) Operations, and Require Permits for Vessels Fishing Recreationally for HMS

- Final Action:** Amend the consolidated regulations implementing the HMS Fishery Management Plan (FMP) to: Clarify certain provisions pertaining to the definition and operations of HMS CHB Permits; implement an Atlantic HMS recreational vessel permit; adjust the time frame for permit category changes for Atlantic HMS and Atlantic tunas permits; clarify the regulations regarding the retention of Atlantic bluefin tuna (BFT) in the Gulf of Mexico by recreational and HMS CHB vessels; and clarify the National Marine Fisheries Service's authority to adjust BFT retention limits by vessel type.
- Type of statement:** Environmental Assessment (EA) and Regulatory Impact Review (RIR)
- Lead Agency:** National Marine Fisheries Service (NMFS): Office of Sustainable Fisheries (F/SF)
- For further information:** Highly Migratory Species Management Division (F/SF1)
NMFS-Northeast Regional Office (NERO)
One Blackburn Drive
Gloucester, MA 01930
Phone: (978) 281-9260; Fax: (978) 281-9340
- Abstract:** On May 28, 1999, NMFS published a final rule (64 FR 29090) to implement the HMS FMP and Amendment One to the Atlantic Billfish FMP and consolidated regulations for Atlantic HMS into 50 CFR 635. After issuance of the final HMS FMP and publication of the final consolidated rule, NMFS received comment that activities previously authorized under the HMS regulations when issued under separate CFR parts were now prohibited due to the consolidated format of the regulations. NMFS subsequently published a technical amendment to the final consolidated regulations (64 FR 37700, July 13, 1999) to correct certain drafting errors and omissions that were not consistent with the final HMS FMP. Some issues relating to HMS CHB permits still require further clarification, such as: captain requirements; the ability to sell fish, and applicability of daily catch limits on board vessels used for several purposes. This action amends the HMS regulations to: 1) define CHB operations and clarify regulations regarding the

applicability of daily retention limits and sale of HMS; 2) implement an Atlantic HMS recreational vessel permit; 3) adjust the time frame for change of Atlantic HMS and Atlantic tunas permit category; 4) clarify regulations pertaining to BFT fisheries in the Gulf of Mexico; and 5) clarify NMFS' authority to adjust BFT retention limits by vessel type.

FINDING OF NO SIGNIFICANT IMPACT

The National Marine Fisheries Service (NMFS) submitted the regulatory amendment to the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) for Secretarial review under procedures of the Magnuson-Stevens Fishery Conservation and Management Act. This final rule is accompanied by an integrated document that includes an Environmental Assessment and a Regulatory Impact Review. Copies of the rule and the supporting document are available from Brad McHale at the Highly Migratory Species Management Division, NMFS-NERO, One Blackburn Drive, Gloucester, MA 01930 or from the website at www.nmfs.noaa.gov/sfa/hmspg.html.

The preferred alternatives implement regulatory amendments to the consolidated regulations associated with HMS charter/headboat (CHB) permits, implement an HMS recreational permit, adjust the time frame for permit category changes for Atlantic tunas and Atlantic HMS permits, clarify the regulations regarding the retention of BFT in the Gulf of Mexico by recreational and HMS CHB vessels, and clarify regulations that allow NMFS to adjust Atlantic bluefin tuna (BFT) retention limits by vessel type. The Environmental Assessment (EA) considers information contained in the Environmental Impact Statement associated with the HMS FMP (NMFS, 1999). Based on the following summary of effects, I have determined that implementation of the approved preferred alternatives will not have significant effects on the human environment.

Summary of Effects

Rationale

Current HMS regulations require vessels that take fee-paying passengers fishing for HMS to obtain an HMS CHB permit, and the vessel operates under the CHB regulations at all times, regardless if the vessel is engaged in for-hire fishing or otherwise on a particular trip. The HMS CHB permit is required in lieu of any other commercial or recreational category tunas permit. A vessel issued an HMS CHB permit could also be issued, but is not be required to obtain or possess, swordfish or shark limited access permits. The preferred alternative would clarify the HMS regulations regarding CHB operations by defining a “for-hire” trip and clarify the applicability of catch limits when CHBs are engaged or not engaged in for-hire fishing. Consistent with other regulations issued under the authority of the Magnuson-Stevens Act, NMFS defines a for-hire trip as when a vessel carries a passenger who pays a fee or has a specified number of persons aboard: more than three persons for a vessel licensed to carry six or fewer; more than the required number of crew for a Coast Guard inspected vessel. The number of persons aboard would be enumerated inclusive of the operator and crew and the retention limits would also apply to the operator and crew. Given this definition of for-hire fishing, further clarifications to the regulations pertaining to CHB operations will be finalized relative to the sale of fish and applicability of retention limits.

Current HMS regulations require recreational vessel owners fishing for Atlantic tunas to obtain an Atlantic tunas Angling category vessel permit. The preferred alternative would extend the current Angling category permit to recreational fishing for all managed HMS. This preferred alternative enables NMFS to monitor recreational landings and catch and release statistics more accurately, thereby enhancing HMS management and research efforts. The total universe of HMS recreational fishermen, and their effort, catch, and bycatch (including discards) is presently unknown. Estimates of some of these parameters are currently made using survey instruments, such as the Large Pelagic Survey and the Marine Recreational Fisheries Statistics Survey, as well as reporting from registered tournaments. An HMS recreational permit system will greatly improve information available to NMFS regarding the recreational HMS fisheries by providing an accurate measure of participation, which will greatly help in estimating effort, catch, and bycatch (including discards) from a substantial component of the HMS fisheries.

Current regulations allow Atlantic HMS and Atlantic tunas permit holders to change their vessel permit category only once per year, and that change must occur before May 15. These regulations are meant to prevent vessels from fishing in more than one category in a particular fishing year. Due to changes in current method of permit issuance, some modifications to these regulations are warranted. Atlantic tunas permits can now be obtained 24-hours a day, 7 days a week, through the Internet-based permitting system. As a result of these changes, the preferred alternative would allow the one permit category change per year to occur up until the first day of the fishing year, June 1. In addition, it would allow the one permit category change per year to occur after June 1, so long as it occurs with the permit renewal for that year. These changes provide NMFS and fishery participants added time and flexibility to issue regulations and choose a permit category, respectively, and still prevent vessels from participating in more than one fishing category in a particular fishing year.

Current regulations under 635.23(b) and (c) could be interpreted to mean that in the Gulf of Mexico, Angling category vessels could retain school, large-school, and small medium BFT subject to the retention limits in place at the time, while CHB vessels could not. The preferred alternative modifies the regulations to clarify that the only BFT that could be retained by Angling category and CHB vessels in the Gulf of Mexico is one large medium or giant BFT per vessel per year, caught incidentally while fishing for other species. These large medium or giant BFT would be considered the “trophy” fish for the vessel and sale would not be permitted.

Under the current HMS regulations, NMFS has the authority to adjust the BFT retention limits during the fishing season to maximize utilization of the quota for BFT. When vessels permitted in the CHB category are fishing under the Angling category BFT, the same retention limits apply whether the vessel is operating as a charter boat with one passenger, or a headboat carrying 30 passengers. With the BFT retention limits generally defined in terms of the number of fish that can be retained per vessel, the current situation can be inequitable for vessels carrying 30 passengers, as their limit is set at the same amount of fish as a vessel with a charter of two to six people. The preferred alternative clarifies NMFS’ authority to set differential BFT retention limits

by vessel type (e.g., charter boat vs. headboat), to provide equitable fishing opportunities for all fishing vessels, throughout the fishery.

Conclusion

Section 1508.27(b) of the implementing regulations for the Council for Environmental Quality identifies 10 concepts for evaluation of significance.

(1) Beneficial and Adverse Impacts: Implementation of the preferred alternatives will have multiple beneficial impacts. They clarify the existing regulations pertaining to HMS CHB vessel operations by defining for-hire fishing. Application of this definition clarifies the regulations pertaining to HMS CHB operations, such as the sale of fish, applicability of retention limits, and the requirements for a licensed captain to be onboard the vessel. It is possible that the preferred alternative could result in some increased targeting and landings of yellowfin tuna (YFT) by the handgear fishery, which may expand landings to pre-HMS FMP levels by CHB fishermen. However, any increased targeting and landings of YFT as well as any associated environmental impacts are expected to be minimal. By extending the current recreational permit requirement for Atlantic tunas to all regulated Atlantic HMS, NMFS' collection of data from the recreational HMS fisheries will greatly improve. A minor adverse impact associated with this preferred alternative is that recreational HMS vessel owner/operators will need to pay a fee (currently \$27.00/vessel) to obtain a recreational permit. Adjusting the time frame for changes of Atlantic tunas and Atlantic HMS permit categories provides NMFS and fishery participants added time and flexibility to issue regulations and choose a permit category, respectively, and would still prevent vessels from participating in more than one BFT quota category in a particular fishing year. A preferred alternative also clarifies NMFS' authority to set differential BFT retention limits by vessel type (e.g., charter boat vs. headboat), so that NMFS could adjust the retention limits to provide equitable fishing opportunities for all fishing vessels, throughout the fishery.

(2) Public Safety: The preferred alternatives do not have any impacts on public safety. Fishing activity or behavior will change slightly to allow the YFT handgear fishery to expand to pre-HMS FMP levels as a result of implementing the preferred alternatives.

(3) Unique geographic areas: The preferred alternative will not affect unique geographic areas, except for the clarification of the BFT regulations pertaining to the Gulf of Mexico to ensure their consistency with International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations.

(4) Controversial effects on the Human Environment: There will be minimal controversial effects on the human environment, with the possible exception of the HMS Recreational Angling permit requirement. NMFS has determined that the benefits of a Federal Recreational Atlantic HMS permit system, which will accurately identify the existing, active universe of recreational HMS vessels and could be subsequently be used as a tool for any statistical data collection program, outweigh the public burden associated with applying for and receiving an annual permit.

The other alternatives in this action are supported and have been requested by fishery participants for some time. These alternatives have been discussed extensively by the NMFS Highly Migratory Species Advisory Panel, which is composed of representatives from the recreational and commercial fishing industries, the environmental community, academia, and regional and state fishery management authorities.

(5) *Uncertain, Unknown, or Unique Risks:* It is possible that the preferred alternatives could result in some increased targeting and landings of YFT by the handgear fishery, which may expand landings to pre-HMS FMP levels by CHB fishermen. However, any increased targeting and landings of YFT as well as any associated environmental impacts are expected to be minimal. There are no effects on the human environment that are highly uncertain or that involve unique or unknown risks.

(6) *Precedence:* The preferred alternatives do not establish new precedence. The for-hire trip definition has been used in NMFS' southeast region and Gulf of Mexico fisheries regulations for quite some time. Vessels recreationally fishing for Atlantic tunas are currently required to obtain a Federal recreational vessel permit, and the Atlantic HMS Angling permit extends that requirement to cover all regulated Atlantic HMS. The other preferred alternatives are for clarification purposes, and thus do not set new precedence.

(7) *Cumulative impacts:* The preferred alternatives would lessen the cumulative negative impacts on the regulated Atlantic CHB fishery. In terms of economic impacts, the estimated 20 CHB vessels that would be affected by the preferred alternative are likely to experience substantial positive impacts due to increased landings of and gross revenues from YFT. Compliance with the preferred alternatives is consistent with the objectives of the HMS FMP and with the recommendations of the International Commission for the Conservation of Atlantic Tunas (see Section 5.1.2).

(8) *Adverse effects on resources:* The effects of the preferred alternatives do not apply to any sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or cause loss or destruction of significant scientific, cultural or historical resources. Should such structures or resources be located in the EEZ, vessels would already avoid those areas to avoid potential gear loss.

(9) *Endangered Resources:* The preferred alternatives will not have an impact on threatened or endangered species. These preferred alternatives would not modify fishing gear types, but could possibly result in a very limited expansion of commercial handgear fishing effort. Because handgear fisheries rarely interact with listed species, such a limited increase in fishing effort (should it occur at all) should not change the impacts to listed species relative to the status quo.

(10) *Other environmental laws:* The effects of these preferred alternatives do not have an impact on State or local regulations inside or outside the Exclusive Economic Zone (EEZ). It is possible that the preferred alternatives could result in some increased targeting and landings of YFT by the

handgear fishery, which may expand landings to pre-HMS FMP levels by CHB fishermen. However, any increased targeting and landings of YFT as well as any associated environmental impacts are expected to be minimal (see Section 5.1.2).

For the reasons stated above, implementation of these regulatory amendments, which clarify certain provisions pertaining to the definition and operations of HMS CHB vessels, implement an Atlantic HMS recreational vessel permit, adjust the time frame for permit category changes for Atlantic tunas and Atlantic HMS permits, clarify the regulations regarding the retention of BFT in the Gulf of Mexico by recreational and HMS CHB vessels, and clarify NMFS' authority to adjust BFT retention limits by vessel type, will not significantly affect the quality of the human environment, and preparation of an Environmental Impact Statement on this final action is not required by Section 102(2)(c) of the National Environmental Policy Act or its implementing regulations.

Approved: Rebecca Lent for
Assistant Administrator for Fisheries

November 29, 2002
Date

TABLE OF CONTENTS

Abstract i

FINDING OF NO SIGNIFICANT IMPACT iii

1.0 Purpose and Need for Action 1

1.1 Regulatory history 3

1.2 The FMP and the framework process 6

1.3 Endangered Species Act and Marine Mammal Protection Act 7

1.4 Impacts on Essential Fish Habitat 7

1.5 Paperwork Reduction Act 8

2.0 Alternatives 8

2.1 Issue 1: Definition of an HMS For-Hire Trip 9

2.1.1 Alternative 1: No Action/Status Quo (No Definition of CHB Trip) 9

2.1.2 Alternative 2: Define For-Hire Trips Based on Fee-Paying Passengers or
Number of Persons Onboard (Preferred Alternative) 9

2.1.3 Alternative 3: Define CHB Trips as Those Taken Aboard a Permitted HMS
CHB with a Licensed Captain Onboard 9

2.2 Issue 2: Require all Vessels Fishing Recreationally for HMS to Obtain a Vessel
Permit 9

2.2.1 Alternative 1: No Action/Status Quo (Permit Requirements Limited to
Atlantic Tunas) 10

2.2.2 Alternative 2: Require All Vessels Fishing Recreationally for Atlantic HMS
to Obtain an Atlantic HMS Angling Category Permit (Preferred
Alternative) 10

2.2.3 Alternative 3: Require All Vessels Fishing Recreationally for Sharks,
Swordfish, and Billfish to Obtain a Recreational Permit for Each Species
Group 10

2.3 Issue 3: Adjustment of Time Frame for Change of Atlantic HMS and Atlantic
Tunas Permit Category 10

2.3.1 Alternative 1: No Action/Status Quo (Maintain May 15 Deadline) 10

2.3.2 Alternative 2: Allow a Permit Category Change at Any Time, Provided that
the Permit Category Change Occurs with the Permit Renewal for that
Fishing Year (Preferred Alternative) 11

2.3.3 Alternative 3: Allow One Permit Category Change to Occur Prior to the
Publication of the Final Initial BFT Quota Specifications and General
Category Effort Controls 11

2.4 Issue 4: Clarify the Regulations Regarding the Retention of BFT in the Gulf of
Mexico by Recreational and CHB Vessels 11

2.4.1 Alternative 1: No Action/Status Quo 11

2.4.2	Alternative 2: Clarify the Regulations Regarding the Retention of BFT in the Gulf of Mexico by Recreational and CHB Vessels (Preferred Alternative)	11
2.5	Issue 5: Clarify NMFS' Authority to Adjust BFT Retention Limits by Vessel Type	12
2.5.1	Alternative 1: No Action/Status Quo (No Distinction by Vessel Type)	12
2.5.2	Alternative 2: Clarify NMFS' Authority to Set BFT Limits by Vessel Type (Preferred Alternative)	12
3.0	Small Business Regulatory Enforcement and Fairness Act and EO 12866	12
4.0	Description of the fishery and affected environment	13
5.0	Consequences of Alternatives Including the Preferred Alternative	17
5.1	Issue 1: Definition of an HMS For-Hire Fishing Trip	18
5.1.1	Alternative 1: No Action/Status Quo	18
5.1.2	Alternative 2: Define For-Hire Trips Based on Fee-Paying Passengers or Number of Persons Onboard (Preferred Alternative)	20
5.1.3	Alternative 3: Define For-Hire Trips as Those Taken Aboard a Permitted HMS CHB with a Licensed Captain Onboard	22
5.2	Issue 2: Require all Vessels Recreational Fishing for HMS to Obtain a Vessel Permit	23
5.2.1	Alternative 1: No Action/Status Quo (Permit Requirement Limited to Atlantic Tunas)	23
5.2.2	Alternative 2: Require all Vessels Fishing Recreationally for Atlantic HMS to Obtain an Atlantic HMS Angling Category Permit (Preferred Alternative)	24
5.2.3	Alternative 3: Require All Vessels Fishing Recreationally for Sharks, Swordfish, and Billfish to obtain a Recreational Permit	26
5.3	Issue 3: Adjustment of Time Frame for Change of an Atlantic HMS CHB or HMS Angling or Atlantic Tunas Permit Category	27
5.3.1	Alternative 1: No Action/Status Quo	27
5.3.2	Alternative 2: Allow a Permit Category Change at Any Time, Provided that the Permit Category Change Occurs with the Permit Renewal for that Fishing Year (Preferred Alternative)	28
5.3.3	Alternative 3: Allow One Permit Category Change to Occur Prior to the Publication of the Final Initial BFT Quota Specifications and General Category Effort Controls	28
5.4	Issue 4: Clarify the Regulations Regarding the Retention of BFT in the Gulf of Mexico by Recreational and CHB Vessels.	29
5.4.1	Alternative 1: No Action/Status Quo	29

5.4.2	Alternative 2: Clarify the Regulations Regarding the Retention of BFT in the Gulf of Mexico by Recreational and CHB Vessels (Preferred Alternative)	30
5.5	Issue 5: Adjust BFT Retention Limits by Vessel Type	30
5.5.1	Alternative 1: No Action/Status Quo	30
5.5.2	Alternative 2: Clarify NMFS' Authority to Set BFT Limits by Vessel Type (Preferred Alternative)	31
5.6	Cumulative Effects	32
6.0	Regulatory Impact Review	33
6.1	Analyses of Alternatives	34
6.2	Conclusion	36
7.0	Preliminary Economic Evaluation	37
8.0	Mitigating Measures	38
9.0	Unavoidable Adverse Impacts	39
10.0	Irreversible and Irrecoverable Commitment of Resources	39
11.0	List of agencies and persons consulted in formulating the final rule	39
12.0	List of preparers	39
13.0	References	40
14.0	Tables and Figures	41

1.0 Purpose and Need for Action

The purpose of this action is to improve management for Atlantic HMS fisheries by implementing regulatory amendments to the FMP for Atlantic Tunas, Swordfish and Sharks (HMS FMP) and Amendment One to the FMP for Atlantic Billfish (Billfish FMP). Through these regulatory amendments, the National Marine Fisheries Service (NMFS) will 1) clarify the definition and operation of HMS CHBs; 2) implement an Atlantic HMS recreational fishing permit; 3) adjust the time frame for permit category changes for Atlantic HMS and Atlantic tunas permits; 4) clarify the regulations regarding the recreational and HMS CHB retention of BFT in the Gulf of Mexico; and 5) clarify NMFS' authority to establish BFT retention limits by vessel type. In this EA, NMFS considers the biological, social, and economic impacts of alternatives for these regulatory amendments.

In order to improve management the HMS CHB fishery, a definition of “for-hire trips” is established. Current HMS regulations require that vessels which take fee-paying passengers fishing for HMS must obtain a HMS CHB permit. An HMS CHB permit could also be issued, but is not required to obtain or possess limited access shark or swordfish handgear permits. In most cases, HMS CHBs must operate under the CHB regulations at all times, regardless of whether the vessel is engaged in for-hire fishing or fishing commercially. This creates a burden on HMS CHB vessels that wish to participate in both the commercial and for-hire fisheries and needs to be addressed. The purpose of this action is to redefine HMS CHB operations in a manner that relieves this burden.

Current HMS regulations do not differentiate between fishing methods (for-hire vs. commercial) for vessels that have swordfish and shark limited access permits. For example, if a vessel with an incidental shark permit and an HMS CHB permit were engaged in for-hire recreational fishing, the vessel would be allowed to retain and sell sharks per the incidental commercial limits (five large coastal sharks, 16 small coastal/pelagic sharks), even though the vessel carried recreational fee-paying passengers on board. Similarly, the regulations do not allow retention of sharks in a particular management group by vessels with limited access shark permits after the shark management unit is closed, even if the vessel were engaged in for-hire recreational fishing. The same is true for swordfish, although there is an allowance for swordfish retention once the directed quota is closed, and there is no recreational retention limit currently in effect. This creates an inequitable situation since other HMS CHB vessels may pursue these species under recreational retention limits and needs to be addressed. Likewise, HMS CHB vessels with limited access shark or swordfish handgear permits may harvest these species in amounts exceeding the recreational limit while the commercial season is open, whereas other HMS CHB vessels are bound to recreational limits. The HMS CHB permitting program did not intend to establish inequitable situations among permit holders, nor did it intend to preclude HMS CHB vessels from commercial fishing activities. The purpose of these actions is to clarify the HMS CHB regulations pertaining to the sale of fish and the applicability of retention limits to relieve burdens on HMS CHB vessels that also possess limited access shark and/or swordfish permits and to address unintentional inequities.

Currently HMS regulations require recreational vessel owners fishing for Atlantic tunas to obtain an Atlantic tunas Angling category vessel permit. This requirement currently does not apply to vessels solely targeting sharks, swordfish, or billfish. Not having complete information about the universe of vessels participating in the recreational HMS fisheries limits NMFS' ability to understand the full universe of participants in the fishery and subsequently to fully assess impacts from regulatory actions. By including other HMS in the recreational permit, fishery scientists and managers would have information on the entire universe of participants in the Atlantic HMS recreational fishery. Increased information on participation, catch and effort is required for effective fisheries management of the domestic recreational fisheries, and could enhance monitoring as well as compliance and enforcement.

Current regulations allow Atlantic HMS and Atlantic tunas permit holders to change their vessel permit category only once per fishing year (June 1 - May 31 of the following year), and that change must occur before May 15. These regulations are meant to prevent vessels from fishing in more than one category in a particular fishing year. Now that the Atlantic tunas and HMS CHB permits can be obtained 24-hours a day, 7 days a week, through the Internet-based permitting system the established permit category change deadline of May 15 limits the flexibility of fishery participants to make knowledgeable choices on permit category selection. In addition, fishermen purchasing vessels previously permitted have been limited to the fishing category chosen by the previous owner.

Clarification of current regulatory language is warranted in order to ensure that the prohibition on directed fishing for BFT in the Gulf of Mexico is not misinterpreted. ICCAT recommendations include the prohibition of a directed fishery for BFT in the Gulf of Mexico since it has been declared a spawning area for this species. When the HMS regulations were consolidated in 1999, the regulatory language for this prohibition became less clear, and current regulations under 635.23(b) and (c) could be misinterpreted to mean that Angling category vessels in the Gulf of Mexico could retain school, large-school, and small medium BFT. This action modifies the regulations to clarify that the only BFT that could be retained by Angling category and HMS CHB vessels in the Gulf of Mexico is one large medium or giant BFT per vessel per year, caught incidentally while fishing for other species. These large medium or giant BFT would be considered the "trophy" fish for the vessel and sale would not be permitted.

BFT retention limits are generally defined in terms of the number of fish that can be retained per vessel. This situation can be inequitable for HMS CHB vessels carrying different amounts of fishermen. For example, a headboat carrying 30 passengers has the same retention limit as a charter boat with six or fewer people on board. Prior to the 1999 consolidation of the HMS regulations, the Atlantic tunas regulations included explicit provisions for NMFS to set differential retention limits by vessel type (e.g., charter boat vs. headboat). This explicit authority was stated less clearly in the consolidated regulations. This action clarifies NMFS' explicit authority to set differential retention limits by vessel type so that NMFS can adjust the retention limits to provide equitable fishing opportunities for all fishing vessel types throughout the HMS CHB fishery.

1.1 Regulatory history

Charter/Headboat Operations

On May 28, 1999, NMFS published a final rule (64 FR 29090) that implemented the HMS FMP and Amendment One to the Atlantic Billfish FMP, and that consolidated regulations for Atlantic HMS into one CFR part. After issuance of the final HMS and Billfish FMPs, and publication of the final consolidated rule, NMFS received comments that several provisions of the regulations were inconsistent with the HMS FMP. Additionally, several commenters indicated that activities previously authorized under the HMS regulations when issued under separate CFR parts, were now prohibited due to the consolidated format of the regulations. NMFS subsequently published a technical amendment to the final consolidated regulations (64 FR 37700, July 13, 1999) to correct certain drafting errors and omissions that were not consistent with the final HMS FMP. One of the issues clarified in the technical amendment was that the three yellowfin tuna (YFT) per person recreational retention limit applied to vessels with Atlantic CHB permits.

NMFS first required CHB permits for Atlantic tunas vessels in 1994. Given quota reductions and allocation issues in the recreational BFT fisheries, it became necessary to improve inseason monitoring of catch, particularly for school BFT. In response, NMFS began issuing permits in order to develop a telephone dialing frame for a fishing effort survey. Recognizing that charter vessels and headboats tend to have higher effort rates than private recreational vessels and, on average, higher catch rates, NMFS established a separate permit category for the purposes of stratifying the two populations for the telephone survey. Issuing separate permits for private and for-hire vessels also facilitated the issuance of regulations tailored to the unique aspects of each category (e.g., catch limits, sale of fish).

In developing the HMS FMP, the HMS Advisory Panel (AP) noted the significance of the for-hire fleet in the recreational fisheries for tunas, billfishes, and sharks. The HMS AP recommended that NMFS expand the CHB permit program from Atlantic tunas to include vessels targeting any HMS so that catch and effort monitoring could be improved. NMFS adopted this expanded permit requirement in the HMS FMP. With all HMS vessels included in the permit system, NMFS can now select a more representative sample of CHB vessels for the logbook program and telephone survey.

In the final consolidated rule, NMFS delayed the effective date of the HMS CHB permit requirement pending Office of Management and Budget (OMB) approval of an increase in reporting burden due to the HMS permit. OMB approval was received in August 2000. On June 7, 2001, NMFS published a Federal Register Notice establishing that, as of July 1, 2001, all vessels taking paying customers to fish for Atlantic tunas, swordfish, sharks, and billfish must obtain an Atlantic HMS CHB permit (66 FR 30651). The implementation of this permit requirement raised issues regarding the definition of CHB operations and for-hire fishing, the applicability of retention limits, and the sale of fish by CHBs. Thus, further clarifications to the

regulations pertaining to CHB operations are being addressed in the alternatives contained in this EA.

HMS Recreational Vessel Permit

On June 20, 1979, NMFS published a final rule which required any vessel that fishes for, catches or takes BFT, except vessels operated by anglers fishing for young school or school BFT, to have a permit (44 FR 36043). These permits were issued at no charge in perpetuity until 1991. In 1991, NMFS set up an annual vessel permit renewal system with a \$20.00 fee to recover administrative costs (56 FR 50061, October 3, 1991). On August 27, 1993, NMFS published a final rule that extended the annual BFT commercial permit requirement to include recreational vessels as well, thus creating the Angling category permit (58 FR 45286). This requirement had a delayed implementation date of May 15, 1994. In 1994, NMFS began issuing recreational BFT permits. At that time, permit fees were waived due to the administrative burden of check processing, and the renewal period for bluefin tuna permits was increased from one to three years.

On July 27, 1995, NMFS extended the vessel permit requirement to include not only vessels fishing for BFT, but vessels participating in all Atlantic tuna fisheries (60 FR 38505). This rule created the requirement for all commercial and recreational vessels taking BFT, yellowfin tuna (YFT), bigeye, albacore, skipjack, and bonito tunas, and for all commercial vessels taking Atlantic bonito to possess an Atlantic tunas permit. Atlantic bonito were subsequently dropped from the list of regulated species and thus commercial and recreational vessels fishing sole for Atlantic bonito are no longer required to obtain an HMS permit

In 1996, NMFS negotiated with a private contractor to issue Atlantic tunas permits on an annual basis. NMFS sent a letter to all tuna permit holders in November 1996, to notify them that NMFS was moving to an automated, annual permit with a fee of \$18. The deadline for obtaining an annual permit was March 31, 1997 (62 FR 331, January 3, 1997); NMFS later changed (and finalized) the deadline to September 1, 1997 (62 FR 30741, June 5, 1997). As described above, the HMS FMP included a measure to require vessels taking fee-paying passengers fishing for managed HMS to obtain an HMS CHB permit. This requirement was fully implemented in July 2001.

A permit requirement is currently in place for those vessels fishing recreationally for Atlantic tunas. The preferred alternative extends that measure to require all recreational vessels to obtain a vessel permit in order to fish recreationally for all managed HMS.

Vessel Permit Category Change Deadline

In the final rule (64 FR 29090, May 28, 1999) that implemented the HMS FMP and Amendment to the Atlantic Billfish FMP, regulations allow Atlantic HMS CHB and Atlantic tunas permit holders to change their vessel permit category only once per fishing year, and that change must occur prior to May 15. These regulations are meant to prevent vessels from landing BFT in

more than one quota category in a single fishing year. NMFS has extended this deadline on several occasions to provide vessel owners the opportunity to consider category changes after publication of regulatory changes, since these regulatory actions could affect the allowable operations of several fishing categories. Atlantic tunas permits can now be obtained 24-hours a day, 7 days a week, through the Internet-based permitting system. The preferred alternative would allow one permit category change per year to occur after June 1, so long as it occurs with the permit renewal for that fishing year. This change would provide NMFS and fishery participants added time and flexibility to issue regulations and choose a permit category, respectively, and still prevent vessels from participating in more than one fishing category in a particular fishing year.

Retention of BFT in the Gulf of Mexico by Recreational and HMS CHB Vessels

In 1982, the International Commission for the Conservation of Atlantic Tunas (ICCAT) recommended a ban on directed fishing for BFT in the Gulf of Mexico to protect the spawning stock. This action primarily impacted Japanese longline fishermen in the area, as U.S. longline gear had already been prohibited from targeting BFT in the Gulf of Mexico since 1981. NMFS issued additional regulations in 1983 to subdivide the Incidental BFT quota for longline fishermen, and to allow the retention of one giant BFT per year by vessels using rod and reel gear (48 FR 27745, June 17, 1983). No other handgear-caught BFT could be retained in the Gulf of Mexico, and the one giant “incidental” rod and reel-caught BFT could not be sold. The annual limit of one giant (large-medium or giant since 1992) BFT per vessel for handgear vessels in the Gulf of Mexico is still in place, and is now part of the BFT Angling category “trophy” quota.

The 1999 consolidation of the HMS regulations resulted in the BFT Angling category retention limit regulations for the Gulf of Mexico being less clear, because regulations under 635.23(b) and (c) could be interpreted to mean that, in the Gulf of Mexico, Angling category vessels may retain school, large-school, and small medium BFT subject to the retention limits in place at the time, while HMS CHBs may not. This preferred alternative modifies the regulations to clarify that, in the Gulf of Mexico, the only BFT that can be retained by Angling category and HMS CHB vessels is one large medium or giant BFT per vessel per fishing year, caught incidentally while fishing for other species.

Adjustment of BFT Retention Limits by Vessel Type

Under the current HMS regulations, NMFS has the authority to adjust the BFT retention limits during the fishing season to maximize utilization of the quota for BFT. When vessels permitted in the CHB category are fishing under the Angling category BFT quota, the same retention limits apply whether the vessel is operating as a charter boat with one passenger, or a headboat carrying 30 passengers. With the BFT retention limits generally defined in terms of the number of fish that can be retained per vessel, the current situation can be inequitable for vessels carrying 30 passengers, as their limit is set at the same amount of fish as a vessel with a charter of fewer than six people.

Prior to the 1999 consolidation of the HMS regulations, the Atlantic tunas regulations included explicit provisions for NMFS to set differential retention limits by vessel type (e.g., charter boat vs. headboat), but this explicit authority was less clearly stated in the consolidated regulations. This preferred alternative clarifies the Atlantic tunas regulations giving NMFS explicit authority to set differential retention limits by vessel type (e.g., charter boat vs. headboat), so that NMFS could adjust the retention limits to provide equitable fishing opportunities for all fishing vessels, throughout the fishery.

1.2 The FMP and the framework process

Since April 1999, NMFS has been managing Atlantic tunas, swordfish, and shark fisheries under the authority of the Magnuson-Stevens Act and the HMS FMP, and Atlantic tunas and swordfish also under the authority of the Atlantic Tunas Convention Act (ATCA). The HMS FMP established a framework procedure for adjustment of the regulations necessary to achieve the management objectives in the HMS FMP. The framework process requires a complete regulatory package (Environmental Assessment, Regulatory Impact Review, and Regulatory Flexibility Analysis, as appropriate), a public comment period, and at least one public hearing. Under the HMS FMP, an AP meeting is not required for a framework regulatory amendment. However, the topic of defining HMS CHBs and their fishing practices has been discussed at several AP meetings. Following the public comment period, NMFS makes final determinations regarding consistency of the proposed measures with the objectives of the HMS FMP, the National Standards, and other applicable law.

The HMS FMP includes a suite of management objectives for all HMS fisheries. The following objectives are particularly pertinent to this rulemaking:

- “Consistent with other objectives of this FMP, to manage Atlantic HMS fisheries for continuing yield so as to provide the greatest overall benefit to the Nation, particularly with respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems. Optimum yield is the maximum sustainable yield from the fishery, reduced by any relevant social, economic, or ecological factors”;
- “To minimize, to the extent practicable, economic displacement and other adverse impacts on fishing communities during the transition from overfished fisheries to healthy ones”; and
- “To better coordinate domestic conservation and management of the fisheries for Atlantic tuna, swordfish, sharks, and billfish, considering the multispecies nature of many HMS fisheries, overlapping regional and individual participation, international management concerns, historical fishing patterns and participation, and other relevant factors”.

The purpose of this framework action is to meet the above objectives established by the HMS FMP, the Magnuson-Stevens Act, and ICCAT recommendations, by addressing the management needs outlined in Section 1 of this EA. Alternatives considered to address the needs and objectives of this action are described in Section 2, and consequences of these alternatives are discussed in more detail in Section 5.

1.3 Endangered Species Act and Marine Mammal Protection Act

The preferred alternatives in this EA/RIR are not expected to increase endangered species or marine mammal interaction rates. On June 14, 2001, NMFS issued a Biological Opinion (BiOp) after concluding formal consultation for the HMS fisheries under Section 7 of the Endangered Species Act (ESA). The agency is implementing the BiOp pursuant to a final rule published on July 9, 2002 (FR 67 45393). The preferred alternative in this EA will not substantially alter current fishing practices and will not likely increase takes of listed species or result in any irreversible and irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures to reduce adverse impacts on protected resources.

The handline/rod-and-reel gear fisheries are listed as category III fisheries under the Marine Mammal Authorization Program (MMPA) due to their remote likelihood of interaction with marine mammals. Although a few reports of entanglement in handline and harpoon gear exist, these were likely non-injurious entanglements from which the whales could easily disentangle themselves or be disentangled. Increased development of the Disentanglement Network under the Atlantic Large Whale Take Reduction Plan should provide adequate mitigation for these infrequent (and thus far, non-lethal) entanglements. Turtles have also been known to be captured in rod-and-reel fisheries at relatively low rates.

1.4 Impacts on Essential Fish Habitat

The Magnuson-Stevens Act established a program to promote the protection of essential fish habitat (EFH) in the review of projects conducted by Federal agencies, or under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat. After the Secretary has identified EFH, Federal agencies are obligated to consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any EFH.

In the HMS FMP, the area in which this action is planned has been identified as EFH for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, Southeast Fishery Management Council, Gulf of Mexico Fishery Management Council, and the Highly Migratory Species Management Division of NMFS. These preferred alternatives would not alter current fishing practices previously addressed in the HMS FMP, therefore, it is not anticipated that this action would have any adverse impacts to EFH and no consultation is required.

1.5 Paperwork Reduction Act

These preferred alternatives contain two new collection-of-information requirements and restate several existing reporting requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). On June 17, 2002, OMB approved the collection-of-information requirements as a revision to the collections previously approved under OMB control numbers 0648-0327 and 0648-0373.

The first new collection of information is an extension of the Atlantic tunas recreational Angling category permit requirement to include fishermen who fish for all Atlantic HMS, including swordfish, sharks, and billfish, with an estimated public reporting burden of 30 minutes per response for initial permit applications, and 6 minutes per response for renewing the permit. The second collection includes persons acquiring this permit who were not previously subject to a permit requirement who may also be subject to existing gear-marking requirements. OMB has also approved the extension of this requirement, estimated to take 15 minutes per float marked. These preferred alternatives also restate a number of collection-of-information requirements that OMB has previously approved. These requirements and their OMB control numbers and estimated response times are: vessel permits for Atlantic tunas and Atlantic HMS Charter/headboats, initial (30 minutes; 0648-0327) and renewal (6 minutes; 0648-327); vessel permits for Atlantic shark and swordfish (20 minutes; 0648-0205); dealer permits for Atlantic sharks and swordfish (5 minutes; 0648-0205); call in recreational landing reports for Atlantic bluefin tuna (5 minutes; 0648-0328); dealer permits for Atlantic tunas (5 minutes; 0648-0202); gear marking (15 minutes; 0648-0373); and vessel marking (45 minutes; 0648-0373).

All estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. NMFS has requested comments regarding burden-hour estimates for collection-of-information requirements contained in this action. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to, a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

2.0 Alternatives

The following alternatives represent the range of options considered and evaluated by NMFS regarding the definition of HMS for-hire trips, the implementation of an HMS recreational vessel permit, adjusting the time frame for permit category changes for Atlantic HMS and Atlantic tunas permits, clarifying the regulations regarding the retention of BFT in the Gulf of Mexico by recreational and HMS CHB vessels, and clarifying NMFS' authority to adjust BFT retention limits by vessel type.

2.1 Issue 1: Definition of an HMS For-Hire Trip

The alternatives on this issue consist of the status quo (no action), a definition based upon the number of passengers or fee-paying passengers onboard a vessel, and a definition based upon the presence of a U.S. Coast Guard licensed operator onboard the vessel.

2.1.1 Alternative 1: No Action/Status Quo (No Definition of CHB Trip)

This alternative would maintain the status quo, in which there is no definition of what constitutes a charter trip versus a commercial trip for HMS CHB vessels. Vessels with a HMS CHB permit currently fish under the same regulations regardless of whether they are operated in a for-hire capacity, a commercial capacity, or a private recreational capacity.

2.1.2 Alternative 2: Define For-Hire Trips Based on Fee-Paying Passengers or Number of Persons Onboard (Preferred Alternative)

This preferred alternative defines a for-hire trip as a trip carrying a fee-paying passenger, or having more than three persons for a vessel licensed to carry six or fewer, or more than the required number of crew for a U.S. Coast Guard inspected vessel. The number of persons aboard is enumerated inclusive of the operator and crew and the retention limits would also apply to the operator and crew.

2.1.3 Alternative 3: Define CHB Trips as Those Taken Aboard a Permitted HMS CHB with a Licensed Captain Onboard

This alternative would define a for-hire trip as only those trips taken by a vessel possessing an HMS CHB permit while a U.S. Coast Guard licensed operator was onboard the vessel. For those trips made by a vessel possessing an HMS CHB permit while a U.S. Coast Guard licensed operator was not onboard, the vessel would be operating in a commercial capacity.

2.2 Issue 2: Require all Vessels Fishing Recreationally for HMS to Obtain a Vessel Permit

The following alternatives represent the range of options considered by NMFS regarding the implementation of an HMS recreational vessel permit.

2.2.1 Alternative 1: No Action/Status Quo (Permit Requirements Limited to Atlantic Tunas)

This alternative would maintain the status quo, in which the HMS regulations require vessels fishing recreationally for Atlantic tunas to obtain an Atlantic tunas Angling category

permit. Federal vessel permits would not be required for vessels fishing recreationally for Atlantic sharks, swordfish, or billfish.

2.2.2 Alternative 2: Require All Vessels Fishing Recreationally for Atlantic HMS to Obtain an Atlantic HMS Angling Category Permit (Preferred Alternative)

This preferred alternative extends the current permit requirement for those vessels fishing recreationally for Atlantic tunas to all vessels fishing recreationally for all managed HMS.

2.2.3 Alternative 3: Require All Vessels Fishing Recreationally for Sharks, Swordfish, and Billfish to Obtain a Recreational Permit for Each Species Group

This alternative would require three separate recreational permits for sharks, swordfish, billfish if a vessel is fishing recreationally for sharks, swordfish, and billfish in Federal waters. These three permits would be in addition to the current Atlantic tunas Angling category permit requirement.

2.3 Issue 3: Adjustment of Time Frame for Change of Atlantic HMS and Atlantic Tunas Permit Category

The following alternatives represent the range of options considered by NMFS regarding the adjustment of the time frame for permit category changes for the Atlantic HMS CHB and Atlantic tunas permits.

2.3.1 Alternative 1: No Action/Status Quo (Maintain May 15 Deadline)

This alternative would maintain the status quo, in which the HMS regulations state that an Atlantic HMS CHB or Atlantic tunas vessel owner/operator may change the category of the vessel's permit no more than once each fishing year and only from the time the permit is issued until May 15. From May 16 to the end of the fishing year, the vessel's permit category may not be changed, regardless of a change in vessel's ownership.

2.3.2 Alternative 2: Allow a Permit Category Change at Any Time, Provided that the Permit Category Change Occurs with the Permit Renewal for that Fishing Year (Preferred Alternative)

This preferred alternative allows one permit category change per fishing year for vessels with an Atlantic HMS CHB or Atlantic tunas permit. This change in permit category must be made prior to the start of the fishing year for which the permit will be effective. The permit category change would also be allowed after the start of the fishing year, as long as it takes place with the permit renewal for that year.

2.3.3 Alternative 3: Allow One Permit Category Change to Occur Prior to the Publication of the Final Initial BFT Quota Specifications and General Category Effort Controls

This alternative would allow one permit category change per fishing year for vessels with an Atlantic HMS CHB or Atlantic tunas permit that must be made prior to the finalization of the initial BFT quota specifications and General category effort controls for the same fishing year.

2.4 Issue 4: Clarify the Regulations Regarding the Retention of BFT in the Gulf of Mexico by Recreational and CHB Vessels

The following alternatives represent the range of options considered by NMFS regarding the clarification of the regulations regarding the retention of BFT in the Gulf of Mexico by recreational and HMS CHB vessels.

2.4.1 Alternative 1: No Action/Status Quo

This alternative would maintain the status quo, in which HMS regulations at 50 CFR §§ 635.23 (b) and (c) could be interpreted to mean that, in the Gulf of Mexico, Angling category vessels could retain school, large-school, and small medium BFT subject to the recreational retention limits in place at the time, while HMS CHBs engaged in recreational activities could not.

2.4.2 Alternative 2: Clarify the Regulations Regarding the Retention of BFT in the Gulf of Mexico by Recreational and CHB Vessels (Preferred Alternative)

This preferred alternative modifies the regulations at 50 CFR §§ 635.23(b) and (c) to clarify that the only BFT that could be retained by an Angling category or an HMS CHB vessel in the Gulf of Mexico is one large medium or giant per vessel per fishing year, caught incidentally while fishing for other species.

2.5 Issue 5: Clarify NMFS' Authority to Adjust BFT Retention Limits by Vessel Type

The following alternatives represent the range of options considered by NMFS regarding the authority to allow NMFS to adjust BFT retention limits by vessel type (i.e., charter boats vs. headboats).

2.5.1 Alternative 1: No Action/Status Quo (No Distinction by Vessel Type)

This alternative would maintain the status quo, in which the HMS regulations do not currently make a distinction in regards to recreational retention limits between charter boat and headboat vessels permitted in the HMS CHB category.

2.5.2 Alternative 2: Clarify NMFS' Authority to Set BFT Limits by Vessel Type (Preferred Alternative)

This preferred alternative clarifies NMFS' authority to set differential BFT retention limits by vessel type (e.g., charter boat vs. headboat), so that NMFS could adjust the retention limits to provide equitable fishing opportunities for all fishing vessels throughout the fishery.

3.0 Small Business Regulatory Enforcement and Fairness Act and EO 12866

The Small Business Regulatory Enforcement and Fairness Act of 1996 amended the Regulatory Flexibility Act (RFA) and made compliance with sections of the RFA subject to judicial review. The purpose of the RFA is to require agencies to assess impacts of their proposed regulations on small entities and is intended to encourage Federal agencies to utilize innovative administrative procedures when dealing with small entities.

In compliance with Executive Order 12866, the Department of Commerce and the National Oceanic and Atmospheric Administration (NOAA) require the preparation of a Regulatory Impact Review (RIR) for all regulatory actions that either implement a new Fishery Management Plan or significantly amend an existing plan, or may be significant in that they reflect agency policy and are of public interest. The RIR is part of the process of preparing and reviewing FMPs and regulatory actions and is intended to provide a comprehensive review of the changes in net economic benefits to society associated with proposed regulatory actions. The analysis also provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problems. The purpose of the analysis is to ensure that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost-effective way.

The analyses required for the RIR and under the RFA are included in Section 6, and are discussed throughout this document, especially in the consideration and evaluation of the impacts of the various alternatives in Section 5.

4.0 Description of the fishery and affected environment

The fisheries affected by these alternatives are, as described in this section, the CHB and recreational sectors of the HMS fisheries. A more complete history and description of these and other HMS fisheries is provided in the HMS FMP, Amendment One to the Billfish FMP, and recent HMS Stock Assessment Fishery Evaluation (SAFE) reports, and are not repeated here.

Yellowfin Tuna Stock Status

Based on movement patterns, as well as other information (e.g., time-area size frequency distributions and location of fishing ground), ICCAT currently manages YFT based on an Atlantic-wide single stock hypothesis. Stock assessments for YFT incorporate various age-structure and production models. The production models imply that, although catches could be slightly lower than maximum sustainable yield (MSY) levels, effort may be either above or below the MSY level, depending on assumptions about fishing power. Consistent with these results, yield-per recruit analyses also indicate that current fishing mortality rates could either be above, or about at, levels that could produce MSY. In summary, international landings of YFT appear to be close to the MSY level and fishing effort and fishing mortality may be in excess of the levels associated with MSY.

HMS Charter/Headboats

The HMS FMP established permitting requirements for all vessels that take fee-paying passengers fishing for Atlantic HMS, and approximately 3,263 HMS CHB permits were issued for the 2000 fishing year. Table 14.1 displays the 2000 Large Pelagic Survey (LPS) estimated number of rod and reel and handline trips targeting large pelagic species. The trips include commercial and recreational trips, and are not specific to any particular species. The LPS was designed to estimate recreational catches of BFT from Maine to Virginia. Although the LPS was designed for BFT, the data collected is also used to estimate catch information for other HMS and to monitor catch per unit effort trends. Because LPS estimates do not cover the area from North Carolina to Texas, further estimates need to be made. Based on the 2000 LPS, an estimated 4,573 charter trips targeting HMS were taken from Maine to Virginia. Based on the NMFS permit database, there were approximately 1,884 vessels permitted in the CHB category for that same geographical area and time frame. Assuming there is an equal ratio of number of CHB permit holders to number of trips taken for states North Carolina through Texas as there is for states Maine through Virginia, the number of trips taken from North Carolina through Texas can be estimated by extrapolating from the number of trips taken from Maine to Virginia. According to the 2000 Atlantic HMS and Atlantic tunas permit database, there were approximately 1,379 vessels from states North Carolina through Texas that possessed a CHB permit. Thus an estimated 3,347 CHB trips targeting HMS occurred from states North Carolina through Texas. Thus, for Maine through Texas, there were an estimated 7,920 charter trips taken during the 2000 season.

NMFS has received several comments indicating that activities previously authorized under the HMS regulations when issued under separate CFR parts, were now prohibited due to the consolidated format of the regulations. NMFS subsequently published a technical amendment to the final consolidated regulations (64 FR 37700, July 13, 1999) to correct certain drafting errors and omissions that were not consistent with the final HMS FMP. One of the issues clarified in the technical amendment was that the three YFT per person recreational retention limit applied to vessels with HMS CHB permits.

NMFS has received comments that applying the YFT retention limit at all times precludes legitimate commercial activity when the vessels are not carrying fee-paying anglers. These commenters have indicated that a few dozen charter vessels in the Mid-Atlantic region have historically conducted commercial fishing trips for YFT when not operating as for-hire vessels. Further, these commenters noted that the HMS FMP did not specifically address commercial fishing by the for-hire fleet and did not consider the impacts of prohibiting such commercial fishing on a part-time basis.

Yellowfin Tuna Landings by Charter/Headboats and General Category Vessels

International YFT landings reported by ICCAT for the 2000 calendar year equaled 135,231 metric tons (mt). Total U.S. YFT landings for the same time frame equaled 7,051 mt or approximately five percent of the international harvest. U.S. commercial handgear landings for YFT for 1997-2000, by area and gear, are presented in Tables 14.2 and 14.3. In the United States, multiple gear types are used to land YFT, such as pelagic longline, commercial handgear, and recreational handgear. The U.S. commercial handgear fishery comprised four percent of total U.S. YFT landings in 2000 (283 mt), or nine percent of all U.S. commercial YFT landings. SERO dealer weigh-out data includes approximately 280 handgear trips that sold YFT in 2000, and approximately 20 (seven percent) of these were reported by CHBs. By extending this ratio to total U.S. YFT landings and U.S. commercial YFT landings, CHB vessels harvest approximately 0.3 percent of total U.S. YFT landings, or 0.6 percent of commercial YFT landings. SERO dealer weigh-out data show that, on average, vessels with Atlantic tunas General category permits landed 22 YFT per trip during 1999 and 2000.

The HMS CHB permit is considered a commercial tuna permit in that tunas caught by vessels possessing the permit may be sold. Prior to July 1, 1999, CHB vessels had the ability to retain and sell all YFT that were caught, as long as they met the minimum size requirements. From the beginning of 1998 through July 1, 1999, SERO weigh-out data consisted of 31 trips made by CHB vessels that landed and sold YFT. Out of those trips, 25 percent landed three or fewer YFT, 42 percent landed between four and six YFT, 10 percent landed between seven and nine YFT, and finally 23 percent landed 10 or more YFT per trip. Based on SERO weigh-out data, the average number of YFT landed by a CHB for this time period is seven fish per trip. After July 1, 1999, CHB vessels only had the ability to retain three YFT per person, including captain and mates, as long as they met the minimum size requirements. From July 1, 1999, through the end of 2000, SERO weigh-out data lists 22 trips that were made by vessels permitted in the CHB category that landed and sold YFT. Out of those 22 trips, 73 percent landed three or fewer YFT, 27 percent landed between four and six YFT, and 0 percent landed between seven or more YFT. Based on SERO weigh-out data, the average number of YFT landed by a CHB for this time period is two fish per trip. This information is presented graphically in Figure 14.1.

Looking at the weight-out data submitted to the Northeast Regional Office (NERO) for the time frame of 1997 through July 1, 1999, a total of 82 trips were reported by vessels permitted in the CHB category where YFT were landed and sold. Out of those 82 trips, 18

percent landed three or fewer YFT, 18 percent landed between four and six YFT, 11 percent landed between seven and nine YFT, and 51 percent landed 10 or more YFT per trip. Based on NERO weigh-out data the average number of YFT landed by a CHB for this time period is 16 fish per trip. Looking at the weight-out data reported to NERO for the time frame of July 1, 1999, through 2001, a total of 83 trips were made by vessels permitted in the CHB category and sold YFT. Out of those trips 16 percent landed three or fewer YFT, 19 percent landed between four and six YFT, 13 percent landed between seven and nine YFT, and 51 percent landed 10 or more YFT per trip. Based on NERO weigh-out data, the average number of YFT landed by a CHB for this time period is 15 fish per trip. This information is presented graphically in figure 14.2.

For the time frame of 1997 through July 1, 1999, 1,454 trips were reported by vessels holding the Atlantic tunas CHB category permit to the NERO vessel trip report (VRT) data collection program. Out of those 1,454 trips, 47 percent reported landing three or less YFT, 21 percent reported landing between four and six YFT, 11 percent reported landing seven to nine YFT, and 21 percent reported landing 10 or more YFT per trip. There is no differentiation between those trips where YFT were retained for personal use or those sold commercially. For the time frame of July 1, 1999, through the end of 2001, 2,285 trips were reported by vessels holding the Atlantic tunas CHB category permit to the NERO VRT data collection program. Out of those 2,285 trips, 46 percent reported landing three or less YFT, 17 percent reported landing between four and six YFT, 11 percent reported landing seven to nine YFT, and 26 percent reported landing 10 or more YFT per trip. Again, there is no differentiation between those trips where YFT were retained for personal use versus those sold commercially.

Limited Access Shark and Swordfish Permits and Charter/Headboats

The HMS FMP established a limited access program for the commercial swordfish and shark fisheries (all gears), as well as for tunas (longline only). Chapter Four of the HMS FMP includes a complete description of the limited access program. The HMS FMP implemented a two-tiered limited access permit system for directed and incidental longline fishing for swordfish sharks and tunas. The limited access program requires pelagic longline vessels targeting tuna or swordfish to have a tuna longline, shark, and swordfish permits (either directed or incidental). Longline vessels targeting just sharks must have a shark permit (either directed or incidental). Thus the HMS regulations prevent vessels with a directed or incidental swordfish permit from possessing an HMS CHB permit (they must possess an Atlantic tunas Longline category permit and cannot hold an HMS CHB permit at the same time), but vessels with shark limited access permits and/or swordfish handgear permits may possess an HMS CHB permit. Currently, there are four vessels that have both Atlantic HMS CHB permits and incidental limited access shark permits, and 14 vessels that possess both HMS CHB permits and swordfish handgear permits. No commercial landings of sharks or swordfish were reported by these vessels in 1999 or 2000.

Current HMS regulations do not differentiate between fishing methods (for-hire vs. commercial) for vessels that have swordfish and shark limited access permits. For example, if a vessel with an incidental shark permit and an HMS CHB permit were engaged in for-hire

recreational fishing, the vessel would be allowed to retain and sell sharks per the incidental commercial limits (five large coastal sharks, 16 small coastal/pelagic sharks), even though the vessel carried recreational fee-paying passengers on board. Similarly, the regulations do not allow retention of sharks in a particular management group by vessels with limited access shark permits after the shark management unit is closed, even if the vessel were engaged in for-hire recreational fishing. The same is true for swordfish, although there is an allowance for swordfish retention once the directed quota is closed, and there is no recreational retention limit currently in effect.

The HMS Recreational Fishery

The recreational fisheries for HMS are described in the HMS FMP (Section 2.5.8), Amendment One to the Billfish FMP (Section 2.1.3), and in the most recent HMS SAFE report (Section 4.4). Atlantic tunas, sharks, and billfish are all targeted by recreational fishermen using rod and reel gear. Atlantic swordfish are also targeted and, although this fishery had declined dramatically over the past twenty years, recent anecdotal reports suggest that a recreational swordfish fishery may be rapidly growing in the Mid-Atlantic Bight and off the East Coast of Florida (for more information, see the draft EA for the proposed rule to establish a recreational retention limit for swordfish).

Recreational fishing for Atlantic HMS is managed primarily through the use of minimum sizes and bag limits. Recreational bluefin tuna fishing regulations are the most complex and include a combination of minimum sizes, bag limits, seasons based quota allotment, and reporting requirements. Bluefin tuna are the only HMS species managed under a recreational quota for which the fishing season closes after the quota has been met. Yellowfin tuna have a three fish per person daily retention limit and a minimum size, and bigeye tuna are also subject to a minimum size.

In September, 2001, NMFS received a petition filed pursuant to the Endangered Species Act (ESA) to list white marlin as endangered or threatened throughout its range and to designate critical habitat. After conducting a comprehensive review of the status of the species, NMFS determined in September 2002, that, while white marlin had declined from historical levels, the stock was not at a level that warranted listing under the ESA. While Atlantic marlin currently have associated landing caps (a maximum amount of fish that can be landed), the overall strategy for management of recreational billfish fisheries is based on use of minimum size limits. The recreational fishery for swordfish is also managed through a minimum size requirement, and retention limits have recently been proposed. NMFS is currently working on a final rule to implement a mandatory recreational landings reporting system for Atlantic billfish and swordfish to meet ICCAT obligations and could potentially implement a recreational retention limit for North Atlantic swordfish. The recreational shark fishery is managed through retention limits in conjunction with minimum size requirements. Additionally, the possession of 19 species of sharks is prohibited.

Atlantic tunas are the only HMS species group that require a permit for recreational fishing at this time. The permit database is used as a sampling frame for the LPS, which is used to estimate recreational catch and effort of large pelagic species.

There were approximately 15,031 Atlantic tunas Angling permits issued for the 2000 fishing year. Table 14.1 displays the estimated number of rod and reel and handline trips targeting large pelagic species in 2000. The trips include commercial and recreational trips, and are not specific to any particular species. Based on the 2000 LPS, an estimated 14,672 private vessel trips targeting HMS were taken from Maine to Virginia. There were approximately 10,050 vessels permitted in the Angling category for that same geographical area and time frame. The number of private trips from North Carolina through Texas can be estimated in a manner similar to that used to estimate charter trips. According to the 2000 Atlantic HMS and Atlantic tunas permit database, there were approximately 4,981 vessels from states North Carolina through Texas that possessed an Angling permit. An estimated 7,272 private vessel trips targeting HMS occurred from states North Carolina through Texas. For Maine through Texas, there were an estimated 21,944 private fishing trips targeting large pelagics taken during the 2000 season.

5.0 Consequences of Alternatives Including the Preferred Alternative

The ecological, social and economic impacts of each alternative identified in Section 2 are discussed below in the context of the relevant National Standards and the objectives of the HMS FMP. Additionally, economic impacts are described in the RIR in Section 6.

5.1 Issue 1: Definition of an HMS For-Hire Fishing Trip

5.1.1 Alternative 1: No Action/Status Quo

This alternative would maintain the status quo, without a definition of what constitutes a for-hire trip versus a commercial trip for HMS CHB vessels. Vessels with an HMS CHB permit currently fish under the same regulations regardless of whether they are operated in a for-hire capacity or as a commercial vessel. The status quo limits HMS CHB vessels to the Angling category retention limit of three YFT per person, thus commercial YFT landings by these vessels would not exceed three fish per person. There is currently no YFT retention limit for vessels that possess the General category permit. When HMS CHBs also possess commercial swordfish handgear and/or shark permits, the commercial regulations apply at all times under the status quo. Hence, if the commercial season closes, these vessels may not retain sharks or swordfish recreationally on legitimate for-hire trips. As described in Sections 1 and 4, vessels operating as CHBs by taking fee-paying anglers fishing for HMS may, on occasion, sell fish taken by those anglers. In addition, when not operating as a CHB, some of these vessels may directly engage in

commercial fishing operations. The status quo does not recognize the dual nature of the operations of vessels with CHB permits, and, in the case of YFT, restricts them to the recreational retention limit regardless of the nature of the trip. The ecological, social, and economic impacts of this alternative are discussed below.

Ecological Impacts

The current level of YFT fishing mortality impacts by vessels permitted in the HMS CHB category would be maintained under this alternative. International YFT landings reported by ICCAT for the 2000 calendar year equaled 135,231 metric tons (mt). Total U.S. YFT landings for the same time frame equaled 7,051 mt or approximately five percent of the international harvest. In the United States, multiple gear types are used to land YFT, such as pelagic longline, commercial handgear, and recreational handgear. The U.S. commercial handgear fishery comprised four percent of total U.S. YFT landings in 2000 (283 mt), or nine percent of all U.S. commercial YFT landings. SERO dealer weigh-out data includes approximately 280 handgear trips that sold YFT in 2000, and approximately 20 (seven percent) of these were reported by CHBs. By extending this ratio to total U.S. YFT landings and U.S. commercial YFT landings, HMS CHB vessels harvest approximately 0.3 percent of total U.S. YFT landings, or 0.6 percent of commercial YFT landings.

In addition to maintaining the current level of impacts to YFT the status quo would continue to apply shark and swordfish commercial limits at all times for CHBs that also possess the limited access swordfish handgear and/or shark permits and preclude them from retaining sharks and/or swordfish recreationally on legitimate for-hire trips when the commercial fisheries are closed. In addition it would allow CHBs to fish in excess of recreational limits (even if engaged in recreational or for-hire fishing) when the commercial fisheries are open. Only four HMS CHB vessels have commercial swordfish handgear and/or shark permits and none have reported landing swordfish or shark commercially during 2000. This level of ecological impact is expected to continue under the status quo.

The status quo would also maintain current impacts of the HMS handgear fishery on listed species including sea turtles and marine mammals. The June 14, 2001, BiOp concluded that the potential for takes of listed species in HMS commercial handgear fisheries is low and is not likely to jeopardize the continued existence of any listed species.

Social and Economic Impacts

Applying the recreational YFT retention limit at all times to CHBs has negative economic impacts as it precludes legitimate commercial activity when the vessels are not carrying fee-paying anglers. The SERO dealer weigh-out data indicate that the number of YFT landed and sold per trip by CHB vessels decreased after the implementation of the recreational retention limit in 1999.

Weigh-out data from the NMFS' SERO and NERO dealer reports indicate that 21 vessels with HMS CHBs landed and sold YFT on 52 trips in 2000. As described in the RIR (Section 6), this results in annual average revenues from YFT sales of \$1,456. Assuming these vessels landed YFT at the same rate as General category vessels (average of 22 YFT day) they could be potentially earning \$3,559 per year from YFT sales, a 144 percent increase over the status quo. There may also be negative social impacts to recreational fishermen who are unable to retain recreational sharks and swordfish on a for-hire trip if the CHB is only able to participate in the commercial shark and swordfish fisheries.

Vessels that possess the HMS CHB permit in combination with the limited access swordfish handgear and/or shark permit may experience negative social and economic impacts due to their inability to fish recreationally for sharks and swordfish when the commercial fisheries are closed, thus making it difficult to book charters. Vessels with these permit combinations may experience positive social and economic impacts when the commercial fisheries are open due to their ability to retain sharks and swordfish in excess of the recreational limits.

Currently the status quo applies commercial limits at all times for HMS CHB vessels with limited access commercial swordfish handgear and/or shark permits and precludes them from retaining sharks and/or swordfish on legitimate for-hire trips when the commercial fisheries are closed, and also allows them to fish in excess of recreational limits (even if engaged in recreational or for-hire fishing) when the commercial fisheries are open.

Conclusion

This alternative is not preferred. Current regulations do not account for the different modes of fishing by vessels with HMS CHB permits and do not provide for legitimate commercial YFT fishing by vessels that also operate as for-hire vessels. This results in an economic loss to these vessels with subsequent social impacts. The social and economic impacts for the HMS CHB vessels that also possess limited access swordfish handgear and/or shark permits will be minimal. An examination of commercial shark and swordfish permit holders found that four vessels possess such permits in combination and these vessels did not have commercial landings of sharks or swordfish in 1999 or 2000. Thus, it is not anticipated that the alternatives for defining for-hire fishing would have an impact on vessels with shark and swordfish permits. Therefore, the ecological impacts of this alternative would be minimal due to the small order of magnitude of the CHB YFT landings in comparison to the overall domestic and international YFT landings, as well as the lack of reported shark and swordfish sales by HMS CHB vessels. This alternative does not address the management objectives described in Section 1.0.

5.1.2 Alternative 2: Define For-Hire Trips Based on Fee-Paying Passengers or Number of Persons Onboard (Preferred Alternative)

This alternative would define a for-hire trip as a trip carrying a passenger who pays a fee, or having more than three persons for a vessel licensed to carry six or fewer, or more than the

required number of crew for an USCG inspected vessel. The number of persons aboard would be enumerated inclusive of the operator and crew and the retention limits would also apply to the operator and crew.

HMS CHB vessels would be subject to the recreational YFT limits only when engaged in for-hire fishing. Commercial YFT limits would apply if there were no fee-paying passengers on board and there were three or few persons on board for a vessel licensed to carry six or fewer or less than the required number of crew for an USCG inspected vessel.

HMS CHB vessels that also possess a commercial limited access shark permit would be subject to the recreational shark retention limits when engaged in for-hire fishing. The retained sharks could be sold if allowed at the time under the commercial regulations (i.e., the commercial fishery was open), otherwise no sale would be allowed. While the commercial shark fishery is open, vessels may retain shark under the commercial limits while not engaged in for-hire fishing.

HMS CHB vessels that also possess a commercial limited access swordfish handgear permit would be subject to the recreational swordfish retention limits when engaged in for-hire fishing. The retained swordfish could be sold if allowed at the time under the commercial regulations (i.e., the commercial fishery was open), otherwise no sale would be allowed. While the commercial swordfish fishery is open, vessels may retain swordfish under the commercial limits while not engaged in for-hire fishing.

Ecological Impacts

The level of YFT landings by vessels permitted in the HMS CHB category could increase under this alternative. However, if such an increase occurred, it would only be by a minimal amount. Commercial handgear YFT landings from 1997 through 2000 are shown in Table 14.2 and indicate that overall post-HMS FMP YFT landings are within the range of pre-HMS FMP YFT landings. On a trip basis, SERO weigh-out data indicate that the number of CHB trips selling YFT dropped from 31 trips prior to July 1, 1999, to 22 trips after July 1, 1999, whereas NERO weigh-out data indicate almost no changes in the number of CHB trips selling YFT (82 trips vs 83 trips, respectively). Assuming that HMS CHBs vessels may increase their landings of YFT from a maximum of nine per trip to rates similar to General category vessels (22 per trip), the total increase in YFT under the preferred alternative is expected to be approximately 10 mt (see Section 6.1 for additional information), a 0.13 percent increase in total U.S. YFT landings. No impacts to YFT stock status are expected from this minor increase in landings.

Shark and swordfish landings are controlled by a quota system, and this alternative does not affect those quotas, thus the overall level of shark and swordfish mortality would not change although landings by HMS CHB vessels that also possess limited access commercial swordfish handgear and/or shark permits could increase. In addition, as described in Section 4, the few

vessels that would be affected by defining CHB operations (CHBs with shark and/or swordfish handgear permits), did not report commercial landings of shark or swordfish in 1999 or 2000.

This alternative may result in limited increased fishing effort among the approximately 20 permitted vessels that would be affected by the preferred alternative. However, as stated above, post-HMS FMP YFT handgear landings are within the range of pre-HMS FMP YFT handgear landings with only a minor decrease in the number of CHB trips selling YFT after implementation of the HMS FMP. Additionally, because handgear fisheries interact with listed species at low rates, such a limited increase in fishing effort (should it occur at all) should not change the impacts to listed species relative to the no action/status quo alternative.

Social and Economic Impacts

This alternative recognizes the dual nature of the operations of vessels with CHB permits, and defines for-hire fishing in a way that would allow such vessels to fish under commercial limits when not engaged in for-hire fishing. The definition of for-hire fishing is similar to that used in other U.S. fisheries (fisheries of the Caribbean, Gulf of Mexico, and South Atlantic). For those vessels that engage in both for-hire and commercial fishing, the impact of this alternative is positive, as it allows them to participate in both fisheries.

Weigh-out data from the NMFS' SERO and NERO dealer reports indicate that 21 vessels with HMS CHB permits landed and sold YFT on 52 trips in 2000. As indicated in the RIR (Section 6), if CHBs were not subject to the three YFT per person limit (and landed YFT in similar amounts to General category vessels), total revenues from commercial YFT handgear landings would rise by 3.6 percent. Section 7 of this document, the Preliminary Economic Evaluation, indicates that potential positive economic impacts associated with this alternative could result in annual revenues of \$3,559 per year from YFT sales, a 144-percent increase from the status quo, for the 21 vessels that had HMS CHB permits and sold YFT in 2000. See Section 7 for more details.

Vessels that possess the HMS CHB permit in combination with the limited access swordfish handgear and/or shark permit may experience positive social and economic impacts due to their ability to fish recreationally for sharks and swordfish when the commercial fisheries are closed, thus not impacting their ability to book charters. Vessels with these permit combinations would also maintain their ability to fish commercially which would have positive social and economic impacts when the commercial fisheries are open due to their ability to retain sharks and swordfish in excess of the recreational limits.

This alternative also maintains the current regulations that require a vessel issued an HMS CHB category permit to have a Coast Guard licensed operator on board when fishing for or retaining Atlantic HMS. Without such a requirement, owners of private vessels would have an incentive to obtain an HMS CHB permit to be eligible to sell tunas and/or avoid retention limits otherwise applicable to the recreational fishery.

Conclusion

This is the preferred alternative. This alternative accounts for the different modes of fishing by vessels with HMS CHB permits and provides for legitimate commercial YFT fishing by vessels that also operate as for-hire vessels. This results in positive economic impacts to these vessels with subsequent positive social impacts. The social and economic impacts for HMS CHB vessels that also possess a limited access swordfish handgear and/or shark permits will also be positive. The ecological impacts of this alternative would be minimal due to the small order of magnitude of the HMS CHB YFT landings in comparison to the overall domestic and international YFT landings, as well as the lack of reported shark and swordfish sales by HMS CHB vessels. This alternative addresses the management needs described in Section 1, furthers the goals and objectives of the HMS FMP, and is consistent with the Magnuson-Stevens Act and the National Standard Guidelines.

5.1.3 Alternative 3: Define For-Hire Trips as Those Taken Aboard a Permitted HMS CHB with a Licensed Captain Onboard

This alternative would define a for-hire trip as only those trips taken by a vessel possessing an HMS CHB permit while a Coast Guard licensed operator was onboard the vessel. For those trips made by a vessel possessing an HMS CHB permit while a Coast Guard licensed operator was not onboard, the vessel could operate in a commercial or private recreational capacity, but could not take fee-paying passengers onboard.

Ecological, Social, and Economic Impacts

Similar to the preferred alternative, this alternative would have minimal ecological impacts, due to the small order of magnitude of the HMS CHB YFT landings in comparison to the overall domestic and international YFT landings, as well as the lack of reported shark and swordfish sales by HMS CHB vessels. There would be positive social impacts for those non-licensed owners of HMS CHB vessels who wish to fish for HMS as a private vessel (i.e., no fee-paying anglers aboard) and hire a Coast Guard licensed operator while the vessel is operating as an CHB. However, there would also be negative social impacts associated with this alternative by creating a loophole where HMS CHB vessel owners/operators that do not intend to engage in for-hire operations would gain the ability to fish both commercially and recreationally, thus circumventing the recreational retention limits and defeating the purpose of issuing permits in different categories as stated in Section 1.1.

Conclusion

This alternative is not selected. Although there would be minimal ecological impacts and potential positive social impacts associated with this alternative, without the requirement that states HMS CHB vessels fishing for or retaining HMS must have a Coast Guard licensed captain on board the vessel, owners of private vessels would have an incentive to select the HMS CHB

permit to be eligible to sell fish and/or avoid retention limits otherwise applicable to the recreational fishery. Such an incentive would likely result in a large number of private vessels obtaining permits for the HMS CHB category and may undermine the LPS statistical purpose of separating the HMS CHB sector of the HMS fleet from the private recreational and commercial sectors of the fleet as mentioned in Section 1.1.

5.2 Issue 2: Require all Vessels Recreational Fishing for HMS to Obtain a Vessel Permit

5.2.1 Alternative 1: No Action/Status Quo (Permit Requirement Limited to Atlantic Tunas)

This alternative would maintain the status quo, in which the HMS regulations require vessels fishing recreationally for Atlantic tunas to obtain an Atlantic tunas Angling category permit. Approximately 13,000 Atlantic tunas Angling category permits are issued each year. The current fee for obtaining an Atlantic tunas Angling category permit is \$27.00 per vessel. Federal vessel permits are not required for vessels fishing recreationally for Atlantic sharks, swordfish, or billfish.

Ecological Impacts

The data collected under the current permitting and reporting requirements provide NMFS with important information about the recreational Atlantic tunas fisheries. Not having complete information about the universe of vessels participating in the recreational HMS fisheries, however, limits NMFS' ability to obtain catch and effort information. Increasing the quality and scope of information collected would improve NMFS' ability to manage HMS recreational fisheries. While permitting requirements do not have a direct ecological impact, maintenance of the status quo would prevent NMFS from collecting more complete information on catch and effort of sharks, swordfish, and billfish in HMS recreational fisheries, which in turn could result in management decisions that adversely affect efforts to rebuild and maintain healthy HMS stocks, minimize bycatch in HMS fisheries, and address other issues regarding conduct and impacts of HMS fisheries.

Social and Economic Impacts

While continuing the status quo permitting requirements would impose no additional burden on the regulated community, it may contribute to negative social and economic impacts. If lack of adequate data were to result in long-term management actions (or lack thereof) that result in overfishing and/or bycatch, for example, the long-term economic consequences could be negative for fishery participants and communities. In the short-term, those vessels that recreationally fish for sharks, swordfish, and billfish would not be economically impacted by a recreational permit fee.

Conclusion

This alternative is not selected. Not having complete information about the universe of vessels participating in the recreational HMS fisheries limits NMFS' ability to understand the full universe of participants in the fishery and subsequently to fully assess impacts from regulatory actions. Increased information on participation, catch and effort is required for effective fisheries management of the domestic recreational fisheries, and could enhance monitoring as well as compliance and enforcement. Failure to collect additional data will hinder effective HMS management, and thus may have negative ecological, social, and economic consequences.

5.2.2 Alternative 2: Require all Vessels Fishing Recreationally for Atlantic HMS to Obtain an Atlantic HMS Angling Category Permit (Preferred Alternative)

This preferred alternative would extend the current permit requirement for those vessels fishing recreationally for Atlantic tunas to all vessels fishing recreationally for all managed Atlantic HMS. The Atlantic tunas Angling category permit will be changed to an Atlantic HMS Angling permit, and will be required for vessels fishing recreationally for Atlantic tunas, sharks, swordfish, and billfish.

Ecological Impacts

This preferred alternative would enable NMFS to more accurately monitor recreational landings, catch, and participation for all recreational HMS, thereby enhancing HMS management and research efforts. The universe of recreational fishermen, and their effort, catch, and bycatch is poorly known at present, with a possible exception for the Atlantic tunas fisheries. Estimates of some of these parameters are currently made using survey instruments, such as the LPS and the Marine Recreational Fisheries Statistics Survey (MRFSS), as well as reporting from registered tournaments. While permitting requirements do not have a direct ecological impacts it will provide essential information for domestic recreational HMS fishery management policy. For example, a recreational HMS permit database will provide NMFS with a sampling frame that is the basis for fleet size calculations used for catch and effort estimates in fisheries that do not require mandatory reporting. Although permitting requirements do not have a direct ecological impact, increased information on participation, catch, and effort in Atlantic HMS recreational fisheries could result in management decisions that benefit stocks.

Social and Economic Impacts

Monitoring Atlantic HMS recreational fisheries, particularly Atlantic billfish and swordfish, can be a challenge due to the rare event nature of these fisheries (i.e., fewer boats fishing offshore than inshore and success rates may be lower for large pelagics than for inshore species), the timing of landings (e.g., late-day returns from offshore trips), and the wide geographic range of landings (i.e., Texas to Maine and the Caribbean). Trips landing swordfish, sharks, blue marlin, white marlin, and sailfish are intercepted relatively infrequently within the scope of NMFS' current recreational statistical programs (the MRFSS and the LPS). By including other HMS in the recreational tuna permit, fisheries scientists would have information

on the entire universe of participants in the Atlantic HMS fishery. Increased information on participation, catch, and effort is required for effective fisheries management, and could enhance monitoring as well as compliance and enforcement. Finally, information on the vessel owners participating in Atlantic HMS recreational fisheries is needed for NMFS to analyze impacts of management measures on small businesses.

This preferred alternative increases the regulatory burden on recreational fishermen by requiring that they participate in an annual permit process. This could have a minor negative economic impacts for those vessels that need to obtain a \$27.00 Atlantic HMS recreational permit. However, the regulatory burden for both anglers and NMFS should be substantially reduced by incorporating the existing recreational permitting requirement (Angling category permit for Atlantic tunas) into the expanded Atlantic HMS permit requirement. Many saltwater fishermen target multiple HMS; for example, some who target billfish also catch other large pelagic species like tuna and sharks. Tuna anglers are already required to hold a recreational permit, so the new permitting burden will be borne by those anglers that participate in the recreational fisheries for sharks, swordfish, or billfish, but have not participated in the tuna fishery.

Annual permit issuance/renewal would not have substantial impacts on small businesses. The universe of affected anglers could include the following: the nearly 13,000 vessels currently permitted in the Atlantic tunas Angling (recreational) category, approximately 10,000 billfish anglers (minimum estimate based on the number of billfish tournament anglers from Fisher and Ditton, 1992), and vessels engaged solely in recreational shark or swordfish fishing. The number of vessels associated with the 10,000 billfish anglers, as well as the extent of the overlap between billfish vessels, recreational shark and swordfish vessels, and (already permitted) tuna vessels is unknown, but the overlap is likely substantial. Thus the universe of affected vessel owners is likely to be smaller than the sum of the above estimates, as only one permit would be required for participation in any HMS recreational fishery. Annual permit issuance/renewal would not have a substantial economic impact on HMS anglers. The renewal process would be the same automated system currently in effect for Atlantic tunas permits, thus reducing social and economic burden associated with paperwork, mailing time for forms, and minimizing the cost of initial permit applications and renewals.

Conclusion

This is the preferred alternative because it will greatly improve NMFS' collection of data from the recreational HMS fisheries at a relatively small social and economic cost. This alternative addresses the management needs described in Section 1, furthers the goals and objectives of the HMS FMP, and is consistent with the Magnuson-Stevens Act and the National Standard Guidelines.

5.2.3 Alternative 3: Require All Vessels Fishing Recreationally for Sharks, Swordfish, and Billfish to obtain a Recreational Permit

This alternative would require separate recreational permits for sharks, swordfish, and billfish. These three permit requirements would be in addition to the current Atlantic tunas Angling category permit requirement.

Ecological, Social, and Economic Impacts

The impacts of this alternative would be similar to those of the preferred alternative, except that this alternative would have a greater administrative burden on the public. Under this alternative, those vessels participating in recreational HMS fisheries may need to obtain four individual recreational permits (tuna, shark, swordfish, and billfish) depending on the species the vessel wishes to retain. The burden imposed on fishermen by these increased permitting requirements (e.g., four separate permit fees, and the time it takes to apply for and renew four separate permits) would constitute a negative social/economic impact. For instance, a recreational vessel that may wish to target or retain Atlantic tunas, sharks, swordfish, or billfish would need to pay four times the amount as the preferred alternative would require (i.e., \$108.00 vs \$27.00).

Conclusion

This alternative is rejected due to the level of duplication and associated social and economic burden it places on the recreational fishery, as well as the inefficient use of NMFS' and the public's resources.

5.3 Issue 3: Adjustment of Time Frame for Change of an Atlantic HMS CHB or HMS Angling or Atlantic Tunas Permit Category

5.3.1 Alternative 1: No Action/Status Quo

This alternative would maintain the status quo regulations, which states that an Atlantic HMS or Atlantic tunas vessel owner/operator may change the category of the vessel's permit no more than once each fishing year and only from the time the permit is issued until May 15. From May 16 to the end of the fishing year, the vessel's permit category may not be changed, regardless of a change in vessel's ownership. These regulations are meant to prevent vessels from landing BFT in more than one quota category in a single fishing year. Commercial permits for swordfish and sharks are issued by the SERO.

Ecological, Social, and Economic Impacts

This alternative does not provide NMFS or fishery participants added time and flexibility to issue regulations and choose permit categories, respectively, now that permits can be applied for or renewed on a real-time basis. In addition, the current regulations on permit category change can result in unfortunate situations for persons purchasing vessels that have been permitted in the Atlantic tunas fishery in the past. For example, under current regulations, if a recreational fisherman were to purchase a vessel during the month of June that was permitted in the Atlantic tunas General category three years ago (but has not had a valid permit since), the new owner could not purchase an HMS Angling permit - the vessel would only be allowed to have a permit in the General category because it was past the May 15 deadline. This can lead to both negative social and economic impacts. This alternative will not affect HMS landings and thus will not have any ecological impacts.

Conclusion

This alternative is not selected. Atlantic tunas, HMS CHB, and HMS Angling permits can now be obtained 24-hours a day, 7 days a week, through the Internet-based permitting system. The current category change deadline of May 15 does not account for the real-time capabilities of the Internet-based permitting system and unnecessarily restricts the ability for a fishery participant to make educated choices regarding their vessels permit category.

5.3.2 Alternative 2: Allow a Permit Category Change at Any Time, Provided that the Permit Category Change Occurs with the Permit Renewal for that Fishing Year (Preferred Alternative)

This preferred alternative would allow one permit category change per fishing year for vessels with an Atlantic tunas permit or an Atlantic HMS Angling or HMS CHB permit. This change in permit category must be made prior to the start of the fishing year for which the permit will be effective. The permit category change would also be allowed after the start of the fishing year, however, as long as it takes place at the time of the permit renewal for that fishing year. This alternative would not change issuance of commercial swordfish and shark permits by the SERO.

Ecological, Social, and Economic Impacts

This alternative will not affect HMS landings and thus will not have any ecological impacts. Atlantic tunas permits and HMS CHB and Angling permits can now be obtained within minutes, 24-hours a day, 7 days a week, through the Internet. As a result of this Internet-based permitting system, NMFS allows the one permit category change to occur until the first day of the fishing year, June 1. In addition, NMFS will allow the one permit category change to occur after June 1, so long as it occurs with the renewal for that year. This provides added flexibility to fishery participants to make knowledgeable choices on permit category selection, and prevents situations where persons that purchase new vessels are unknowingly limited to the permit

category of the previous owner from past years. This alternative would result in both positive social and economic impacts to fishery participants.

Conclusion

This is the preferred alternative. This alternative provides NMFS and fishery participants added time and flexibility to issue regulations and choose a permit category, respectively, and still prevents vessels from landing BFT in more than one quota category in a single fishing year.

5.3.3 Alternative 3: Allow One Permit Category Change to Occur Prior to the Publication of the Final Initial BFT Quota Specifications and General Category Effort Controls

This alternative would allow one permit category change per fishing year that must be made prior to the finalization of the initial BFT quota specifications and General category effort controls for the same fishing year. NMFS attempts to publish final initial quota specifications and General category effort controls before the beginning of the fishing year. Part of the rationale for the adjustment of the fishing year from a calendar year to one that begins June 1 was to provide adequate time for the development of proposed and final specifications after the annual ICCAT meeting which is held in November. However, due to the variations in workload this is not always possible and some delays may be experienced. The original intent behind the May 15 deadline is to prevent vessels from landing BFT in more than one fishing category quota in a particular fishing year.

Ecological, Social and Economic Impacts

This alternative may have negative social and economic impacts. Allowing fishery participants to change their category prior to the finalization of the initial BFT quota specifications and General category effort controls for the same fishing year could undermine the intent of the category change deadline. If a delay is experienced in the finalization of the quota specifications, fishery participants may land BFT in two quota categories during the same fishing year. This could create an inequitable situation among fishery participants if vessels are switching BFT quota categories after any one category quota is reached and that fishing category is closed.

Conclusion

This alternative is rejected because it could potentially undermine the original intent of the regulation, which is to prevent vessels from participating in more one fishing category in a particular fishing year if the publication of the final initial BFT specifications and General category effort controls do not publish prior to the start of the fishing year, i.e., June 1.

5.4 Issue 4: Clarify the Regulations Regarding the Retention of BFT in the Gulf of Mexico by Recreational and CHB Vessels.

5.4.1 Alternative 1: No Action/Status Quo

This alternative would maintain the status quo language in the regulatory text, which may be misinterpreted. The current regulations regarding the retention of BFT by recreational and HMS CHB vessels in the Gulf of Mexico may be misinterpreted to mean that HMS Angling vessels could retain school, large-school, and small medium BFT subject to the retention limits in place at the time while HMS CHB vessels could not. ICCAT Recommendations do not allow for any directed fishing for BFT in the Gulf of Mexico, which is a recognized spawning area for BFT.

Ecological, Social, and Economic Impacts

Regulations that could be interpreted to allow directed fishing for BFT in the Gulf of Mexico would be contrary to ICCAT Recommendations and could have negative ecological, social, and economic impacts. ICCAT has designated BFT as overfished and, as mentioned above, has designated the Gulf of Mexico as a spawning area for BFT. Allowing directed fishing on BFT in the spawning area is not conducive to the rebuilding of the BFT stock. The current regulatory language may be misinterpreted and lead fishery participants to believe an inequitable recreational BFT retention limit exists between HMS CHB vessels and Atlantic HMS Angling category vessels. This misinterpretation could also put vessels in a situation where they are in violation of fishery regulations, and subject to monetary fines.

Conclusion

This alternative is not selected because current regulations may be misinterpreted and thereby may undermine the original intent behind the regulations, which is to prevent directed fishing for BFT in the Gulf of Mexico.

5.4.2 Alternative 2: Clarify the Regulations Regarding the Retention of BFT in the Gulf of Mexico by Recreational and CHB Vessels (Preferred Alternative)

Directed fishing for BFT in the Gulf of Mexico is prohibited. This alternative would modify the current language in 635.23(b) and (c) to clarify that the only BFT that could be retained by an Atlantic HMS Angling or an HMS CHB vessel in the Gulf of Mexico is one large medium or giant per vessels per fishing year, caught incidentally while fishing for other species.

Ecological, Social, and Economic Impacts

This alternative would modify the current regulations to clarify them and ensure that they are consistent with ICCAT Recommendations on BFT fishing in the Gulf of Mexico. Due to the fact that this alternative does not change the intent of the current regulations regarding the recreational BFT retention limits in the Gulf of Mexico, but modifies the language to clarify those regulations, the impacts are minimal. Clarification of this regulatory language should decrease, if not eliminate, recreational harvest of BFT in the Gulf of Mexico and should have positive

ecological impacts. Vessels that may have been misinterpreting the current regulations and targeting BFT recreationally, may experience both negative and positive social impacts. These vessels would not have the ability to retain recreational BFT caught in the Gulf of Mexico, but they also would no longer be in violation of HMS regulations and subject to monetary fines.

Conclusion

This is the preferred alternative because it alleviates confusion regarding the recreational retention limits of BFT in the Gulf of Mexico by HMS CHB and recreational Atlantic HMS Angling category vessels. It is consistent with ICCAT Recommendations and with the intent of current regulations.

5.5 Issue 5: Adjust BFT Retention Limits by Vessel Type

5.5.1 Alternative 1: No Action/Status Quo

This alternative would maintain the status quo language in the regulatory text regarding retention limit adjustments, which currently does not make a distinction between vessel types (e.g., charter boats and headboats) in authorizing inseason changes to the BFT retention limits. Under the current HMS regulations, NMFS clearly has the authority to adjust the BFT retention limits during the fishing season to maximize utilization of the quota for BFT. When vessels permitted in the HMS CHB category are fishing under the Angling category BFT quota, the same retention limits apply whether the vessel is operating as a charter boat with one passenger, or a headboat carrying 30 passengers.

Ecological, Social, and Economic Impacts

With the BFT retention limits generally defined in terms of the number of fish that can be retained per vessel, the current situation can be inequitable for Coast Guard inspected vessels authorized to carry a larger number of passengers, as their limit is set at the same amount of fish as a vessel with a charter of two to six anglers. Thus these Coast Guard inspected vessels that possess an HMS CHB permit may experience negative social and economic impacts. Prior to the 1999 consolidation of the HMS regulations into one CFR part, the Atlantic tunas regulations included explicit provisions for NMFS to set differential retention limits by vessel type (e.g., charter boat vs. headboat), but this explicit authority was stated less clearly in the consolidated regulations.

This alternative would not change ecological impacts as mortality in the BFT fisheries is controlled through a quota system, with allocations for the different user groups. In 2001, NMFS set a differential BFT retention limit for headboats (Coast Guard inspected vessels), which provided headboat operators the chance to book trips and enhance recreational fishing opportunities in a sector of the fishery that had not participated in the BFT fishery over the last several years (66 FR 42805, August 15, 2001). As mentioned above, the current regulations are

less clear in allowing such differential retention limits than they were previous to the regulatory consolidation, and the status quo would not clarify the regulations.

Conclusion

This alternative is not selected because the current regulatory text states NMFS' authority in the regulations less clearly than the preferred alternative, which clarifies NMFS' flexibility in setting BFT retention limits in order to maximize utilization of the BFT quota.

5.5.2 Alternative 2: Clarify NMFS' Authority to Set BFT Limits by Vessel Type (Preferred Alternative)

This alternative would clarify NMFS' authority to set differential BFT retention limits by vessel type (e.g., charter boat vs. headboat), so that NMFS could adjust the retention limits to provide equitable fishing opportunities for all fishing vessels throughout the BFT fishery.

Ecological, Social, and Economic Impacts

This alternative could potentially lead to additional landings of recreationally caught BFT on Coast Guard inspected vessels, but because BFT are managed under a quota system, no overall increase in BFT mortality from the no action/status quo alternative would occur. As mentioned above, NMFS set a differential BFT retention limit for headboats (Coast Guard inspected vessels) in 2001, which provided headboat operators the chance to book trips and enhance recreational fishing opportunities in a sector of the fishery that they had not participated in over the last several years (66 FR 42805, August 15, 2001). The social and economic impacts of this alternative would be positive.

Conclusion

This is the preferred alternative. This alternative modifies the HMS regulations to clarify NMFS' authority to set differential BFT retention limits by vessel type to provide equitable fishing opportunities for all fishing vessels, throughout the fishery. This alternative is consistent with the intent behind the BFT retention limit adjustment regulations, which is to allow NMFS optimal flexibility in setting BFT retention limits in order to maximize utilization of the quota.

5.6 Cumulative Effects

On May 28, 1999, NMFS published a final rule (64 FR 29090) that implemented the HMS FMP and Amendment One to the Atlantic Billfish FMP, and that consolidated regulations for Atlantic HMS into one CFR part. The revised Final Environmental Impact Statements (FEIS) associated with the FMPs addressed the rebuilding and ongoing management of Atlantic tunas,

swordfish, sharks, and billfish. It integrated aspects of domestic and international management of the fisheries under both Magnuson-Stevens and ATCA. Alternatives to rebuild and manage these fisheries included catch limits, effort limits (time/area closures, gear restrictions, limited entry, commercial retention limits, size limits), permitting and reporting requirements, and other measures. It laid a foundation for both the domestic and international management of Atlantic HMS. The FEIS concluded that the cumulative long-term impacts of these and other management measures would be to rebuild overfished fisheries, minimize bycatch and bycatch mortality, to the extent practicable; identify and protect essential fish habitat; and minimize adverse impacts of fisheries regulations on fishing communities, to the extent practicable.

NMFS does not foresee the cumulative long-term impacts of the preferred alternatives contained in this rule and analyzed in this EA changing from those mentioned above. The intent of choosing the preferred alternatives is to minimize adverse impacts of fisheries regulations on fishing communities that have been brought to NMFS's attention since the implementation of the HMS FMP. The preferred alternatives are not expected to result in any substantial, adverse, cumulative impacts on the human, economic, or social environments.

6.0 Regulatory Impact Review

Under Executive Order (EO) 12866, Federal agencies are required to “assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. . .” Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.” In order to comply with EO 12866, NMFS prepares a Regulatory Impact Review (RIR) that analyzes the net economic benefits and costs of each alternative to the nation and the fishery as a whole. This section of this document assesses the economic impacts of the alternatives considered in the development of this rulemaking. However, certain elements required in an RIR are also required as part of an EA. Thus, this section should only be considered part of the RIR. The rest of the RIR can be found throughout this document. Section 1 of this document describes the need for action and the objectives of the regulations. The alternatives considered are listed in Section 2, analyzed in Section 5, and include measures to define for-hire fishing operations, require an Atlantic HMS recreational vessel permit, adjust the time frame for permit category changes for Atlantic HMS and Atlantic tunas permits, clarify the regulations regarding the retention of BFT in the Gulf of Mexico by recreational and HMS CHB vessels, and clarify NMFS' authority to adjust BFT retention limits by vessel type.

This section focuses on the impacts of the alternatives for defining for-hire fishing in the HMS fishery. The alternatives for defining for-hire fishing would affect those CHB vessels that both commercially fish for YFT and take fee-paying passengers recreational fishing for Atlantic HMS and could affect those commercial shark and swordfish fishermen that also possess HMS CHB permits. An examination of commercial shark and swordfish permit holders found that four

vessels possess such permits in combination and these vessels did not have commercial landings of sharks or swordfish in 1999 or 2000. Thus, it is not anticipated that the alternatives for defining for-hire fishing would have an impact on vessels with shark and swordfish permits.

The other management measures analyzed in section 5 should have minor, if any, impacts, and for the most part either clarify regulations or provide additional flexibility to NMFS and/or the fishing industry. The HMS Angling category permit will have some administrative burden impacts on the public and NMFS, which are examined through Paperwork Reduction Act submission requirements to the Office of Management and Budget.

The universe of affected anglers could include the following: the 12,811 vessels currently permitted in the Atlantic tunas Angling (recreational) category and approximately 10,000 billfish anglers. The extent of the overlap between these groups is currently unknown. NMFS estimates that approximately 90 percent of these will overlap. Thus the universe of affected vessel owners is likely to be smaller than the sum of the above estimates, as only one permit would be required for participation in any HMS recreational fishery, as stated in the preferred alternative.

An administrative cost recovery fee of \$27 is currently charged for the annual permit for Atlantic tunas vessels and would be charged for the HMS Angling category permits. Total costs to the public are estimated at \$630,693 per year for the application processing fee. Internet or toll-free phone renewals (99% of renewals) incur no additional costs but postage or phone charges would accrue to respondents submitting new or renewal applications by mail or fax. Applicants may receive the completed permit by mail or fax at no additional charge, but express mail delivery incurs an additional \$3.55 processing and mailing fee. Year-to-date respondents for 2001 are about 99% by phone or web site. Therefore, it is estimated that about 0.5% of applications will be sent by mail at a cost of \$0.50 each response (0.5% of 23,359), and an additional 0.5% of respondents (0.5% of 23,359) will request express delivery at \$3.55 per response. Total costs to the public including fee and postage and handling are thus estimated at \$473 (\$58 by mail + \$415 by express delivery). The amount due to the program change is 27,020 (\$27,000+17.75 express mail+ 2.50 mail). The amount due to adjustment is \$23,619.

Annualized cost to the Federal government can be obtained by multiplying the fee for the Aquilent contract of \$40,721/mo by 12 months = \$488,652. Additional costs of about \$135,000 per year are incurred by NMFS for contract management and occasional activities in support of the information postings on the website (i.e., updates to regulations, catch limits, fishing seasons). The total costs amount to about \$27 each for the anticipated 23,359 permits for the 2001 fishing year. NMFS will recalculate total costs on an annual basis and determine average costs based on the actual number of permits issued. The cost recovery fee will then be adjusted as required.

6.1 Analyses of Alternatives

This RIR analyzes alternatives, discussed under Section 5.1, for defining for-hire fishing by HMS CHBs which have implications for the applicability of retention limits for YFT and

sharks, and possibly for swordfish (if a recreational retention limit were adopted). As discussed above, there are no expected impacts on shark and swordfish landings, as CHB vessels did not have any reported commercial landings of sharks and swordfish in 1999 or 2000. Thus, the only impacts discussed will be on revenues derived from YFT landings.

Impacts on Fishermen

To assess the impact of these alternatives on revenues throughout the fishery, the number of YFT that is estimated to be landed under each alternative was multiplied by an average weight of 33 lbs. per fish (average YFT weight used in HMS FMP analyses), and then multiplied by the average price per pound of \$1.98 (average ex-vessel YFT price per pound in 2000, live weight). Changes in gross revenues under the various alternatives are presented in Table 14.4. Regarding net revenues, it is not clear what the change in costs would be on a trip due to the ability to retain more YFT, but some additional costs are likely involved (additional fishing time, crew wages, ice, fuel, etc.) when more YFT can be retained. For this RIR, a similar change in net revenues is assumed when there is a change in gross revenues.

For the purposes of this RIR, it is assumed that under the status quo, HMS CHBs could only land and sell nine YFT per trip. Commercial handgear YFT trips usually only involve a captain and one or two crew members, so the most YFT that could be landed under the status quo would be nine per trip. For comparative purposes, vessels with General category permits landed an average of 22 YFT per trip in 1999 and 2000. The analyses for this RIR assume that HMS CHBs would land similar amounts of YFT as General category vessels when operating as commercial vessels, if they were not subject to the three YFT per person recreational retention limit.

In 2000, total commercial handgear YFT landings were 283.7 mt. Using the average price of \$1.98 lb., ex-vessel revenues from YFT caught with handgear totaled \$1,238,381 in 2000. This figure represents an estimate of gross revenues for the YFT commercial handgear fishery under the status quo (Alternative 5.1.1).

NMFS' NERO and SERO dealer weighout data indicate that, in 2000, 21 HMS CHB-permitted vessels made a total of 52 trips per year in which YFT were sold. To estimate the change in revenues resulting from the preferred alternative, the difference in average YFT landings for CHBs (assumed to be nine), was subtracted from the average YFT landings for General category vessels (22 YFT). This difference (13) was multiplied by the number of commercial trips per year (52) by CHBs, then multiplied again by the average weight per YFT (33 lbs.) for the increase in landings, and then multiplied by the average price per pound (\$1.98) to calculate the change in gross revenues. Using this method, the preferred alternative (Alternative 5.1.2) would result in handgear landings of YFT totaling 293.9 mt, with estimated gross revenues of \$1,282,905, an increase of 3.6 percent from the status quo (See Table 14.4).

For Alternative 5.1.3, which would define a for-hire trip as only those trips taken by a vessel possessing an HMS CHB permit while a U.S. Coast Guard licensed operator was onboard the vessel. For those trips made by a vessel possessing an HMS CHB permit while a U.S. Coast Guard licensed operator was not onboard, the vessel would be operating in a commercial capacity. This would provide incentive for private recreational vessel owner/operators to obtain the HMS CHB permit and circumvent recreational retention limits. Thus, this alternative would undermine the rationale and intent of separating the CHB sector from the recreational sector as mentioned in Section 1.1.

For Alternative 5.2.2, which would require all vessels fishing recreationally for Atlantic HMS to obtain an Atlantic HMS Angling category permit, this alternative would increase the regulatory burden on recreational fishermen by requiring that they participate in an annual permit process. However, the regulatory burden for both anglers and NMFS should be significantly reduced by incorporating the existing recreational permitting requirement (Angling category permit for Atlantic tunas) into the expanded Atlantic HMS permit requirement. Many saltwater fishermen target multiple HMS; for example, some who target billfish also catch other large pelagic species like tuna and sharks. Tuna anglers are already required to hold a recreational permit, so the new permitting burden will be borne by those anglers that participate in the recreational fisheries for sharks, swordfish, or billfish, but have not participated in the tuna fishery.

Annual permit issuance/renewal would not have substantial impacts on small businesses. The universe of affected anglers could include the following: the nearly 13,000 vessels currently permitted in the Atlantic tunas Angling (recreational) category, approximately 10,000 billfish anglers (minimum estimate based on the number of billfish tournament anglers from Fisher and Ditton, 1992), and vessels engaged solely in recreational shark or swordfish fishing. The number of vessels associated with the 10,000 billfish anglers, as well as the extent of the overlap between billfish vessels, recreational shark and swordfish vessels, and (already permitted) tuna vessels is unknown, but the overlap is likely substantial. Thus the universe of affected vessel owners is likely to be smaller than the sum of the above estimates, as only one permit would be required for participation in any HMS recreational fishery. The current annual fee for the Atlantic tunas Angling category permit is \$27.00 per vessel, with a net cost of \$351,000 annually to the fishery. Annual permit issuance/renewal would not have a substantial economic impact on HMS anglers because of the estimated level of overlap, although . The renewal process would be the same automated system currently in effect for Atlantic tunas permits, thus reducing paperwork, mailing time for forms, and minimizing the cost of initial permit applications and renewals.

Impacts on Seafood Dealers

NMFS has little data regarding the wholesale price of fish or the costs associated with increased landings of YFT to fish dealers or processors. The preferred alternative for defining for-hire fishing by CHBs will increase the number of commercial handgear-landed YFT purchased by about 3.6 percent.

6.2 Conclusion

Under EO 12866 an action is considered significant if the regulations result in a rule that may:

1. Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in EO 12866.

The preferred alternatives described in this EA have been determined to be not significant for the purposes of EO 12866, as they overall would increase revenues and/or increase flexibility for managers and fishermen in the commercial handgear fishery for HMS. A summary of the expected net economic benefits and costs of each alternative can be found in Table 14.5.

7.0 Preliminary Economic Evaluation

NMFS has conducted a Preliminary Economic Evaluation (PREE) to analyze the impacts of the alternatives for defining for-hire fishing for CHBs. This analysis, along with those from the RIR, have been used to determine that this final rule will not have a significant economic impact on a substantial number of small entities.

The analysis for the PREE has attempted to assess the impacts of the various alternatives on the vessels that participate in the commercial handgear fishery for YFT. The only vessels that would be impacted by the for-hire fishing definition would be those vessels that have HMS CHB permits and sell all or some of their YFT landings. Other commercial handgear vessels (vessels with Atlantic tunas General category permits) would not be affected by this definition. As mentioned above, dealer weighout data indicate that 21 vessels with HMS CHB permits landed and sold YFT on 52 fishing trips in 2000. Using the same assumptions as in the RIR (i.e., that these trips would be limited to nine YFT per trip under the status quo, but would have YFT landings per trip similar to General category vessels (22 YFT/trip) if they were not subject to the recreational limit), the impact of the various alternatives on the estimated 21 vessels was estimated.

The impacts are shown in Table 14.6. It should be noted that the impacts presented here are only for those changes in revenues from YFT sales. The vessels in question are CHBs, and likely generate a good portion of their income from chartering operations, plus they probably sell

other species besides YFT (including other tunas). So, while there would be a change in revenues from YFT sales, discussed below, the overall impacts to these vessels' total revenues would be considerably less (in relative terms) than shown in Table 14.6.

Under the status quo (Alternative 5.1.1), the 21 vessels in question, limited to nine YFT per trip for the 52 trips, would generate revenues of \$1,456 per year from YFT sales (using the average weights and prices described above). Under the preferred alternative (Alternative 5.1.2), where it is assumed that vessels will land 22 YFT per trip, the 21 vessels would generate \$3,559 per year from YFT sales, a 144 percent increase. Adoption of Alternative 5.1.3 would be expected to result in landings similar to those under the status quo, and revenues would not be expected to change from the status quo.

As mentioned above, NMFS has certified to the Small Business Administration that the proposed rule would not have a significant impact on a substantial number of small entities. No comments were received during the proposed rule stage of this rulemaking that would alter the basis for the certification. A few comments received stated that it is unacceptable to charge every fishermen \$27.00 per year for the use of the HMS resources. These commenters felt that the fee was a way to generate money for the Federal government, and that NMFS could establish a permit program without charging a fee. However, uUnder the Magnuson-Stevens Act, NMFS is authorized to charge fees for permits issued to participants in fisheries conducted in the U.S. exclusive economic zone. Further, administrative costs recovery is a NOAA policy, and the minimal fee is calculated annually to recover the costs attributable to the automated permit and reporting system. Under current law, these funds cannot be directly applied to NMFS programs, but must be deposited into the General Fund of the United States Treasury. As a result of the certification, an Initial Regulatory Flexibility Analysis was not prepared for this action.

8.0 Mitigating Measures

The United States is obligated, under ATCA, to implement ICCAT recommendations. Failure to execute these actions in a timely manner would also increase the need for more restrictive measures in the future. To mitigate for any adverse impacts from the preferred alternatives, NMFS will take the following measures:

Atlantic tunas and HMS CHB permit issuance

NMFS has made substantial improvements to its Atlantic tunas and HMS CHB permitting system, which include a website where constituents can purchase initial and renewal Atlantic tunas and HMS CHB permits, update permit information, obtain fishery information and report recreational BFT landings (www.nmfspermits.com). Increasing the level of automation in the permitting process as well as the methods of renewal (i.e., phone, fax, Internet) is expected to improve constituent satisfaction.

SAFE Report

The Stock Assessment and Fishery Evaluation (SAFE) report for HMS provides a summary of the best available scientific information on the condition of stocks, marine ecosystems, and fisheries being managed under federal regulations. Consistent with the guidelines for National Standard 2 of the Magnuson-Stevens Act, the SAFE report is prepared annually and used as a reference in the evaluation and refinement of annual harvest levels, documents substantial trends in the resources and fisheries over time, and identifies associated bycatch and safety issues. Through a comprehensive annual update of key biological, economic, and social indicators, NMFS can ensure use of the best available science in its decision making process.

Landing Tag Program

NMFS is pursuing pilot programs in cooperation with North Carolina and Maryland to include billfish in the existing landing tag programs for recreational BFT. NMFS will use information from these pilot programs to further assess and monitor recreational landings, catch, and participation statistics for all recreational HMS, thereby enhancing HMS management and research efforts.

Non-Target Finfish and Protected Species

NMFS will investigate enhanced data collection activities on interactions with non-target finfish and protected species through additional logbooks, surveys, and where appropriate, observers.

9.0 Unavoidable Adverse Impacts

There are no unavoidable adverse impacts associated with the preferred alternatives.

10.0 Irreversible and Irretrievable Commitment of Resources

There are no irreversible or irretrievable commitments of resources associated with the preferred alternatives.

11.0 List of agencies and persons consulted in formulating the final rule

Discussions relevant to the formulation of the preferred alternatives and the analyses for this EA/RIR involved input from several NMFS components and constituent groups, including: NMFS Southeast Fisheries Science Center, NMFS Northeast Regional Office, NMFS

Enforcement, NMFS Headquarters Staff, and the members of the Highly Migratory Species Advisory Panel (includes representatives from the commercial and recreational fishing industries, environmental and academic organizations, state representatives, and fishery management councils). NMFS also received numerous comments from individual fishermen and interested parties.

12.0 List of preparers

This EA/RIR was prepared by Brad McHale, Dianne Stephan, and Pat Scida from the Highly Migratory Species Management Division, Office Of Sustainable Fisheries, NMFS. For a complete copy of current regulations for the Atlantic tunas, shark, and swordfish fisheries or for a brochure summarizing the Atlantic tunas regulations, please contact the Highly Migratory Species Management Division, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930, phone: (978) 281-9260 fax: (978) 281-9340.

13.0 References

Fisher, M.R. and R.B. Ditton. 1992. Characteristics of billfish anglers in the U.S. Atlantic Ocean. *Marine Fisheries Review* 54(1):1-6.

NMFS. 1999. Final Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks.

NMFS. 2001. National Report of the United States: 2001. NAT/01/4. 17 pp., plus appendices

NMFS. 2002a. Stock Assessment and Fishery Evaluation for Atlantic Highly Migratory Species. U.S. Department of Commerce, National Marine Fisheries Service, Silver Spring, MD.

14.0 Tables and Figures

Table 14.1. Estimated total trips targeting large pelagic species from June 5 through November 5, 2000 Source: LPS telephone and dockside interviews.

State/Area	Private Vessel Trips	Charter Trips	Total
VA	930	198	1,128
MD/DE	1,008	915	1,923
NJ	2,934	1,279	4,213
NY	1,093	468	1,561
CT/RI	1,096	372	1,468
MA	6,390	1,108	7,498
NH/ME	1,221	233	1,454
Total	14,672	4,573	19,245

Note on Handgear Trip Estimates

Table 14.1 displays the estimated number of rod and reel and handline trips targeting large pelagic species in 2000. The trips include commercial and recreational trips, and are not specific to any particular species. One can assume that most trips in MA, NH, and ME were targeting bluefin tuna, and that most of these trips were commercial, as over 90 percent of Atlantic tunas vessel permit holders in these states have commercial General category tuna permits. For the other states, the majority of the trips are recreational (in that fish are not sold), with the predominant targeted species consisting of yellowfin and bluefin tunas, and sharks. It should be noted that these estimates are still preliminary and subject to change.

Table 14.2 Domestic Landings for the Commercial Handgear Fishery, by Species and Gear, for 1997-2000 (mt, whole weight). Source: U.S. National Report to ICCAT: 2001.

Species	Gear	1997	1998	1999	
Bluefin Tuna	Rod and Reel	617.8	603.4	643.6	579.3
	Handline	17.4	29.2	16.4	3.2
	Harpoon	97.5	133.4	114.4	184.2
	TOTAL	732.7	766.0	774.4	766.7
Bigeye Tuna	Troll	3.9	4.0	0	0
	Handline	2.7	0.1	12.3	5.7
	TOTAL	6.6	4.1	12.3	5.7
Albacore Tuna	Troll	5.2	5.8	0	0
	Handline	4.8	0	4.4	7.9
	TOTAL	10.0	5.8	4.4	7.9
Yellowfin Tuna	Troll	237.6	177.5	0	0
	Handline	90.6	64.7	219.2	283.7
	TOTAL	328.2	242.2	219.2	283.7
Skipjack Tuna	Troll	7.9	0.4	0	0
	Handline	0.1	0	6.6	9.7
	TOTAL	8.0	0.4	6.6	9.7
Swordfish	Troll	0.4	0.7	0	0
	Handline	1.3	0	5.0	8.9
	Harpoon	0.7	1.5	0	0.6
	TOTAL	2.4	2.2	5.0	9.5

Table 14.3 Domestic Landings for the Commercial Handgear Fishery by Species and Region for 1996-2000 (mt ww). Source: U.S. National Report to ICCAT: 2001.

Species	Region	1997	1998	1999	
Bluefin Tuna	NW Atl	732.7	766.0	774.4	766.7
Bigeye Tuna	NW Atl	6.6	4.0	11.9	4.1
	GOM	0	0.1	0.2	0.1
	Carib	0	0	0.2	1.5
Albacore Tuna	NW Atl	6.4	5.8	0.6	2.9
	GOM	0	0	≤ .05	0
	Carib	3.6	0	3.8	5.0
Yellowfin Tuna	NW Atl	252.3	177.5	192.0	235.7
	GOM	55.6	60.8	12.7	28.6
	Carib	20.3	3.9	14.5	19.4
Skipjack Tuna	NW Atl	0.7	0.4	0.2	0.2
	GOM	0	0	0.4	0.6
	Carib	7.3	0	5.8	8.8
Swordfish	NW Atl	2.4	2.2	5.0	8.3
	GOM	0	0	≤ .05	1.2

Table 14.4. Summary of Changes in Commercial Handgear YFT under Various Alternatives to Define For-Hire Fishing

Alternative	Commercial Handgear YFT Landings (mt)	Commercial Handgear YFT Revenues	Change from Status Quo
Status Quo	283.7	\$1,238,381	N/A
Alternative 2 (Preferred)	293.9	\$1,282,905	3.6 %
Alternative 3	283.7	\$1,238,381	0.0 %

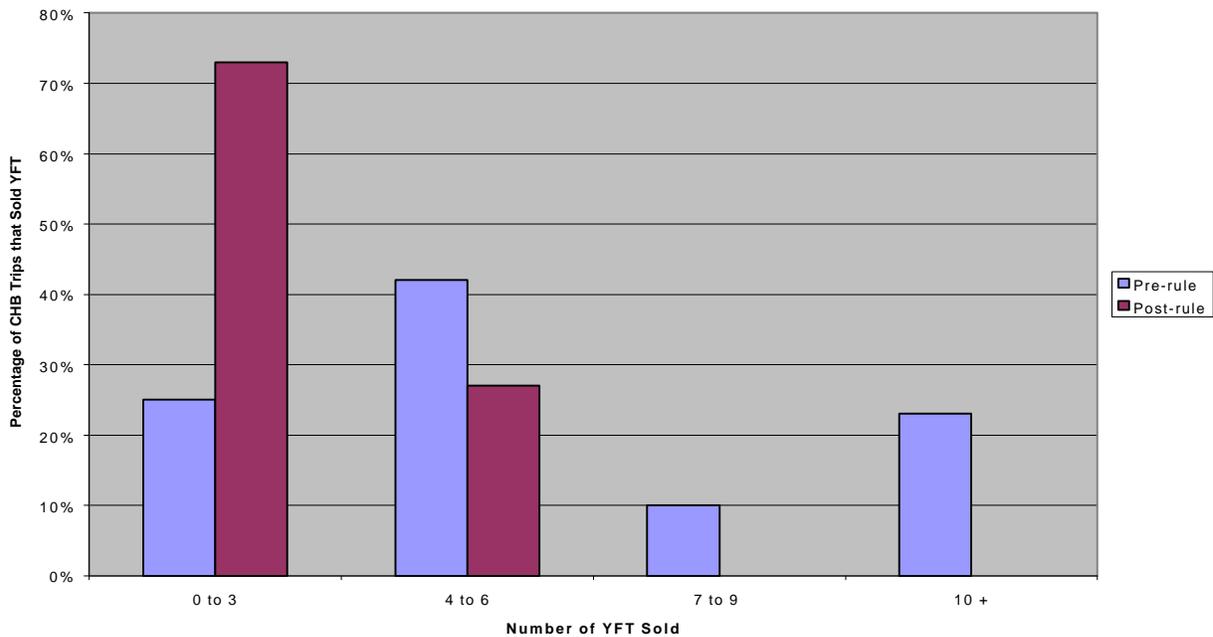
Table 14.5. Summary of Net Economic Benefits and Costs for Each Alternative (other than the Status Quo) Considered to Define For-Hire Fishing

Alternative	Estimated Net Economic Benefits	Estimated Net Economic Costs
Status Quo	None	None
Alternative 2 (Preferred)	Revenues from YFT could increase by 3.6 percent in the commercial handgear fishery	Minimal. The ability to retain additional YFT could result in some increased costs, such as bait, ice, crew wages, etc., but the increase in revenues should more than compensate for additional costs.
Alternative 3	None - same results as status quo	None - same results as status quo

Table 14.6. Impacts on Revenues from YFT Sales for Individual Vessels Resulting from the Various Alternatives to Define For-Hire Fishing

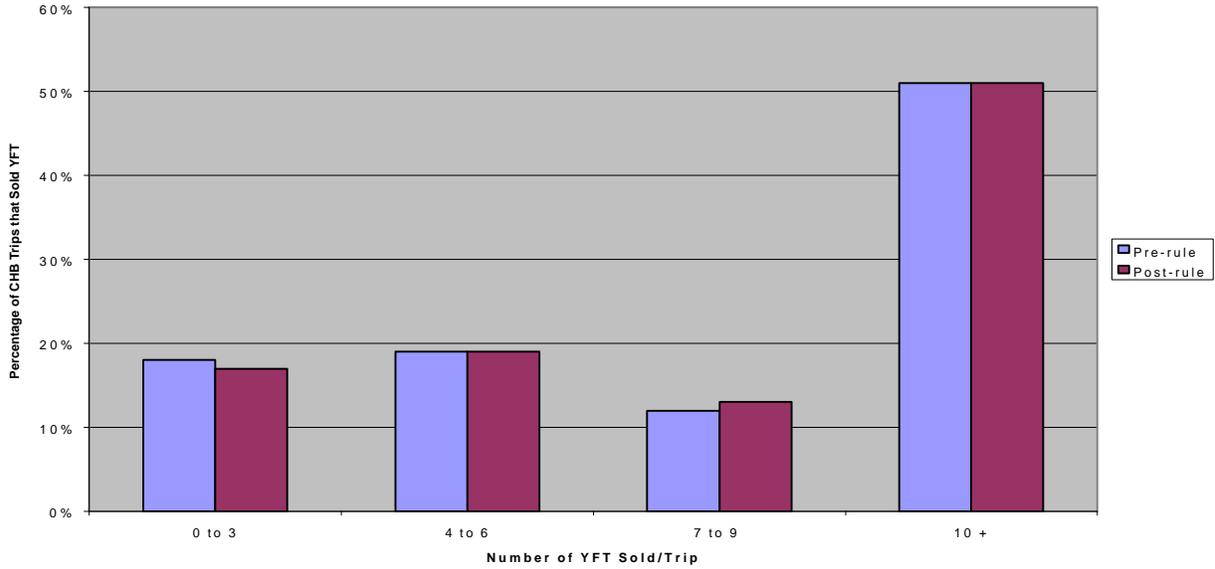
Alternative	Vessel Type	Number of Vessels	Avg. Gross Revenue per vessel from YFT sales	Change in Avg. Gross Revenues per vessel from YFT sales	% Change in Avg. Gross Revenues per vessel from YFT sales
Status Quo	CHB	21	\$1,456	N/A	N/A
Alternative 2 (Preferred)	CHB	21	\$3,559	+ \$2,103	+ 144.4 %
Alternative 3	CHB	21	\$1,456	0	+ 0.0 %

Figure 14.1 Percentage of CHB Trips Selling X Number of YFT Before and After Implementing a 3 per Person YFT Trip Limit. Source: 1998 - 2000 SERO weighout data.



Note: As of July 1, 1999, CHB vessels were limited to 3 YFT per person per trip. Prior to this rule, CHB vessels did not have any YFT retention limits (64 FR 37700, July 13, 1999).

Figure 14.2 Percentage of CHB Trips Selling X Number of YFT Before and After Implementing a 3 YFT per Person Trip Limit. Source: 1998 - 2001 NERO weigh-out data.



Note: As of July 1, 1999, CHB vessels were limited to 3 YFT per person per trip. Prior to this rule CHB vessels did not have any YFT retention limits (64 FR 37700, July 13, 1999).